

CITATION: Re Nunavut Iron Ore, 2026 ONSC 5800
COURT FILE NO.: CL-26-00000219
DATE: 20261014

SUPERIOR COURT OF JUSTICE – ONTARIO [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
NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES CORPORATION, AND
12334992 CANADA INC.

BEFORE: Justice Jana Steele

COUNSEL: *Derek Ricci, Natalie Renner and Dylan Young* for the Applicants

Marc Wasserman, Jeremy Dacks, and Michael De Lellis for the Monitor

Alan Merskey and Natalie Levine for the Ad Hoc Committee of Senior Secured
Noteholders

Maria Konyukhova and Philip Yang for Oaktree Capital Management, L.P. and
Hartree Partners, LP

Orestes Pasparakis, Evan Cobb and Andrew McComb for Export Development
Canada

Natasha MacParland for Bill Aziz, the Chief Restructuring Officer of Baffinland

Ken Rosenberg for the International Union of Operating Engineers Local 793

Kaleigh Sonshine and Patrick Corney for Qikiqtaaluk Corporation & Qikiqtani
Industry Limited

Mark Polley and Brookelyn Kirkham for Qikiqtani Inuit Association and Nunavut
Tunngavik Inc.

Matthew P. Gottlieb and John Carlo Mastangelo for the Energy & Minerals Group
LP

Preet Gill for ArcelorMittal

John Salmas for Willington Trust National Association

Kevin Wu for Centaurus Capital LP

Madison Robins for Wanxiang Future Trust

HEARD: October 9, 2026

ENDORSEMENT

[1] As between the Operating Committee and the chief restructuring officer, who should have ultimate decision-making authority under a Court ordered sale and investment solicitation process (“**SISP**”)? That is the issue the Court is being asked to consider on this motion. Should the SISP be run by the CRO, with the assistance of the Transaction Advisor, but with ultimate decision-making authority remaining with the Debtors’ Operating Committee (in consultation with the Monitor, the CRO and the Transaction Advisor)? Or should ultimate decision making for the SISP lie with the CRO or the Monitor?

[2] The applicant Debtors bring a motion seeking approval of their proposed sale and investment solicitation process (the “**Debtors’ Proposed SISP**”), and directing the CRO, the Debtors, the Transaction Advisor and the Monitor to perform their respective obligations under the SISP.

[3] The Secured Lenders have proposed an alternative SISP where the CRO has the ultimate decision-making authority under the SISP (the “**Secured Lenders’ Proposed SISP**”). They indicated that, in the alternative, they would be satisfied with the Monitor having ultimate decision-making authority under the SISP. Both the CRO and the Monitor have indicated that they would be willing to assume this role.

[4] While the distinction may appear academic at first blush, the ultimate decision-maker in the SISP will have the authority to make critical decisions, including waiving bidding criteria, selecting the successful bid, and finalizing any resulting transaction.

[5] For the reasons set out below, the Secured Lenders’ Proposed SISP is approved with the CRO having the ultimate decision-making power. The Debtors’ motion is dismissed.

Background

[6] Baffinland Iron Mines Corporation (“**BIM Corp**”), 12334992 Canada Inc., and Baffinland Iron Mines LP (“**BIM LP**”), and together with 12334992 Canada Inc. and BIM Corp, the “**Debtors**”) were granted an initial order on May 15, 2026 (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”). Among other things, the Initial Order granted the Debtors protection from their creditors and appointed FTI Consulting Canada Inc. as monitor (the “**Monitor**”). On May 25, 2026, the Initial Order was amended and restated.

[7] The Debtors are a group of affiliated entities that are engaged in the iron ore mining business at the Mary River mine (the “**Mine**”). The Mine is located in the Qikiqtani Region of Nunavut on Baffin Island, Canada. The location of the Mine is very remote – about 1,000 kilometers northwest of Iqaluit, Nunavut’s capital.

[8] BIM LP, through its general partner BIM Corp (collectively, “**Baffinland**”) carries out the Mine’s day-to-day operations. Baffinland is Nunavut’s largest private sector employer; it employs about 1,200 people. Employees fly in and out of Baffin Island on three-week rotations.

[9] Approximately 70 percent of the Debtors’ workforce belongs to the International Union of Operating Engineers Local 793.

[10] Energy & Minerals Group¹ (“**EMG**”) holds about 74.8 percent of the ultimate equity ownership of Baffinland and ArcelorMittal (“**Arcelor**”) holds approximately 25.2 percent of the ultimate equity ownership of Baffinland, in each case through Baffinland’s parent company, Nunavut Iron Ore (“**NIO**”).

[11] Arcelor is the Debtors’ largest iron ore customer.

[12] NIO is subject to a unanimous shareholder agreement (the “**USA**”) among NIO, BIM Corp., BIM LP, EMG and Arcelor. The USA establishes an Operating Committee. The first affidavit of Celeste Van Tonder states that “the decision-making authority of NIO and Baffinland has been delegated to an operating committee whose members are appointed by Arcelor and EMG.”² EMG has appointed five members of the Operating Committee, and Arcelor has appointed two.

[13] The Debtors’ main pre-filing secured debt obligations are: (i) the First Secured Lenders, Oaktree Capital Management, L.P. and Hartree Partners, LP hold a US\$126.5 million term loan and letters of credit with an aggregate face amount of CDN\$75.2 million; (ii) 8.75 percent senior secured notes of \$575 million aggregate principal amount, issued June 27, 2018; and (iii) Export Development Canada’s US\$75 million term credit facility, which is fully drawn.

[14] Export Development Canada (“**EDC**” or the “**DIP Lender**”) is the DIP Lender. The Court approved the DIP Facility on an interim basis on June 10, 2026, and on a final basis on June 30, 2026. The DIP Facility is a US\$400 million revolving credit facility (that may be increased to US\$475 million in certain circumstances). At this time approximately US\$230 million has been advanced under the DIP Facility.

¹ The Energy & Minerals Group LP, along with EMG Fund IV Management, LP and EMG Fund V Management, LP (collectively referred to as “EMG”) are registered investment advisors acting on behalf of certain funds and co-investment vehicles.

² While the governance structure is unusual, such an operating committee is permissible under the governing corporate statute.

[15] The DIP Facility was initially opposed by certain creditors; however, the Debtors, the DIP Lender, and the senior secured creditors, with the support of the Monitor, negotiated a settlement of the dispute regarding the DIP Facility (the **“DIP Settlement”**). The Court approved the DIP Settlement on or about June 30, 2026.

[16] On July 29, 2026, I made an order, among other things, approving the engagement of BlueTree Advisors Inc. to provide the services of William E. Aziz as the Chief Restructuring Officer to the Debtors (the **“CRO”**). The motion to appoint the CRO and the proposed order was not opposed and was supported by the secured creditors, the Debtors, the DIP Lender, and the Monitor.

[17] On August 27, 2026, I made an order, among other things, approving the engagement of Morgan Stanley (the **“Transaction Advisor”**) as the financial advisor. That motion was also unopposed.

[18] The DIP terms required that the Court approve the SISP by September 30, 2026, which deadline has passed. On or about September 30, 2026, the DIP Lender provided notice that certain events of default have occurred under the DIP Facility, including (i) a failure to meet the milestones; and (ii) the Debtors’ seeking court approval of a SISP in a form that is not in form and substance acceptable to the DIP Lender.

[19] On or about October 2, 2026, the Debtors responded setting out their position that they do not accept that an event of default has occurred under the DIP Facility.

Analysis

[20] It is not controversial that the SISP process for this business needs to get going — and soon. It has been almost four months since these *CCAA* proceedings commenced.

[21] There are two versions of the SISP before me — the Debtors’ Proposed SISP and the Secured Lenders’ Proposed SISP. The two versions are substantially the same, except that they diverge on who gets the final say on key decisions.

[22] It is clear that the interested stakeholders, including the Debtors, the Monitor, the CRO, and the Transaction Advisor, have worked together to develop the SISP. The SISP includes an initial marketing and solicitation process and two phases for the evaluation of proposals from qualified bidders. Further, preparatory work has already been undertaken, including the distribution of a form of non-disclosure agreement to select potentially interested parties, the arrangement of site visits to the Mine, and the commencement of preparation of sales process materials.

[23] Under section 11 of the *CCAA*, the court has the authority to approve a sale process in relation to the business and assets of a debtor prior to or in the absence of a plan of compromise or arrangement: *Nortel Networks Corporation (Re)* (2009), 55 C.B.R. (5th) 229 (Ont. S.C.), at paras. 47-48. In *Nortel* the court determined, at para. 49, that it was appropriate to consider the following factors in determining whether to approve a SISP in the absence of a plan:

- a. Is a sale or transaction warranted at this time?
- b. Will the sale benefit the whole “economic community”?
- c. Do any of the debtors’ creditors have a *bona fide* reason to object to a sale of the business?
- d. Is there a better viable alternative?

[24] As set out at paras. 16-17 in *Brainhunter Inc. (Re)* (2009), 62 C.B.R. (5th) 41 (Ont. S.C.), the criteria set out in section 36 of the *CCAA* for approval of a sale may also be considered indirectly when the court is considering whether to approve a sale process. In the context of consideration of a SISP approval, the court may consider whether the proposed SISP is likely to satisfy the following requirements:

- a. The process is reasonable and fair;
- b. The best price has been obtained;
- c. The Monitor supports the SISP; and
- d. The creditors and other interested parties were consulted.

[25] Further, as noted in *Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 107, 33 C.B.R. (6th) 60, at para. 20, in reviewing a proposed sale process, a court should consider:

- a. The fairness, transparency and integrity of the proposed process;
- b. The commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and
- c. Whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

[26] As noted above, all parties agree that a sale is warranted at this time and that a SISP is needed. A SISP will benefit the whole economic community as it will allow the CRO and Transaction Advisor to solicit bids for a broad range of transaction alternatives. At this time, the alternative to a transaction is a liquidation, which would have a devastating impact on many stakeholders, including the loss of over 1,200 jobs. The stakeholders have been involved and consulted. No one has taken the position that a sale is not warranted. Finally, there is no better alternative to a sale process.

[27] A SISP is needed and warranted. The Court must select between two SISPs.

Which of the two SISP proposals should be approved?

[28] The controversial issue before me is who should have the ultimate decision-making power in the SISP. The Debtors' Proposed SISP proposes that the Debtors, the CRO and the Transaction Advisor manage the process, and that the Monitor exercises a supervisory function. However, ultimate decision-making authority, including waiving bidding criteria, selecting the successful bid and finalizing any resulting transaction, would remain with the Debtors, as directed by the Operating Committee in consultation with the CRO, Monitor and Transaction Advisor.

[29] The Secured Lenders have proposed an alternative SISP. They take the position that SISP decisions should be made by the CRO, an independent court officer, with the assistance of the Monitor, another independent court officer.

[30] EDC, the DIP Lender, relies on its approval rights in section 27 of the DIP Facility, which requires that any SISP terms be acceptable to the DIP Lender in its reasonable discretion³:

The Borrowers, Guarantors and DIP Lender agree that the Borrowers (in consultation with the Monitor) shall pursue a sale and investment solicitation process (the "SISP") approved pursuant to a court order **in form and substance acceptable to the DIP Lender** (the "SISP Order"). The SISP Order shall be granted on or prior to the date that is 60 days following the issuance of the Second Amended and Restated Initial Order (the "SISP Order Date"), and for greater certainty the SISP Order shall establish various milestone dates for the SISP (together with the SISP Order Date, the "Milestones"). **All terms of the SISP, including all Milestones, must be acceptable to the DIP Lender in its reasonable discretion.** Forthwith after the date hereof, the Borrowers shall work with the Monitor to commence the process of identifying a financial advisor appropriately experienced and qualified to conduct the SISP. The financial advisor, its scope of services and compensation must be acceptable to the DIP Lender in its reasonable discretion. [Emphasis added.]

[31] The Debtors' Proposed SISP is not acceptable to EDC as DIP Lender. The DIP Lender takes the position that SISP decisions should be made by the CRO, an independent court officer, with the assistance of the Monitor. The DIP Lender is concerned that "a SISP in which the Operating Committee composed of shareholder representatives retains decision making authority invites unresolvable conflicts and process concerns."

[32] EMG submits that the DIP Lender's basis for opposing the Secured Lenders' Proposed SISP — perceived conflicts — does not satisfy the reasonableness requirement in s. 27 of the DIP Facility. EMG's position is that the Operating Committee has the power to make decisions under the SISP and that if EDC is unhappy with the outcome, it can bring a motion to the Court. EDC's position is that it is not using its consent right to supplant the Operating Committee with its

³ The discretion provided to EDC in the DIP is similar to the DIP terms that were proposed by the competing DIP put forward by the other creditors.

nominees or to seize control of the SISP; it is asking the court to appoint a neutral independent person (either the CRO or the Monitor) to make the ultimate decisions under the SISP, decisions which may have a drastic impact on the various stakeholders. The DIP Lender relies on its negotiated rights under the DIP Agreement.

[33] The DIP Lender does not agree with the terms in the Debtors' Proposed SISP. The fact that the DIP Lender's position is supported by the Monitor, the CRO, and the other secured creditors leads one to the unmistakable conclusion that the DIP Lender is exercising its discretion reasonably under section 27 of the DIP Agreement.

[34] On this basis alone, the Debtors' Proposed SISP should be rejected. The contracting parties agreed on a set of terms in the DIP Agreement, including that the SISP terms must be acceptable to the DIP Lender in its reasonable discretion, that the DIP Lender seeks to rely upon.

[35] For completeness, I address below the other primary arguments.

[36] As discussed below, I am satisfied that the most transparent, fair, and even-handed way forward is for the CRO to run the SISP process.

[37] The Debtors submit that they, through the Operating Committee, ought to retain the ultimate decision-making authority over the SISP. The Debtors state that their proposed SISP properly recognizes the decision-making authority of the Operating Committee in this debtor-in-possession proceeding. EMG filed materials in support of the Debtors' Proposed SISP. EMG submits that the counter proposal put forward by the Secured Lenders "is unreasonable and inconsistent with this debtor-led CCAA proceeding."

[38] The Debtors frame the issue as unprecedented – whether they should be stripped of their decision-making power. The Debtors point to numerous cases where the Monitor had the ultimate decision-making power under the SISP, but in each case the debtors relinquished their control; it was not forcibly removed. However, EDC frames the unprecedented nature of this case differently: Here, the secured creditors, the Monitor, and the CRO are telling the Operating Committee to step aside and leave the decision-making to a neutral party, and the Operating Committee is refusing to do so – EDC says that is what is unprecedented about this case.

[39] As EDC submitted numerous times, the question is why? Why won't the Debtors step aside and let an independent court-appointed third party make the final decisions on the SISP, in consultation with the Monitor and the Transaction Advisor? In many other cases the debtors supported the Monitor or the CRO having ultimate decision-making authority in the SISP.⁴ Here,

⁴ In *CFFI Ventures Inc. (Re)*, 2026 NSSC 195, the Monitor, in consultation with the Sale Advisor, was the party with the authority to select the qualifying bid in the SISP put forward by the applicant debtor. Similarly, in *Toys "R" Us (Canada) Ltd. et al.*, (April 1, 2026) Toronto, CL-26-0000042-0000, Dietrich J. approved the SISP put forward by the applicant debtor, which SISP was proposed to be conducted by the Monitor, which would also select the successful bidder. In *Cannapie Group Inc. v. Marzili*, 2022 ONSC 6379, 4 C.B.R. (7th) 194, the applicant sought approval of

the Debtors and EMG have spent tens of thousands of dollars in legal fees, plus significant time, vigorously opposing the suggestion that the CRO (or the Monitor), a neutral court-appointed officer, should have ultimate decision-making authority under the SISP.

[40] The Secured Lenders also have concerns over governance and potential conflicts of interest involving the Operating Committee. Among other things, as set out at para. 58 of the Monitor's Fifth Report, affiliates of EMG and companies belonging to Jowdat Waheed and Bruce Walter (collectively, the "**Royalty Companies**") entered into certain royalty agreements pursuant to which the Royalty Companies agreed to fund BIM LP and BIM up to \$300 million in exchange for royalties on dry metric tonnes of ore shipped from the Milne port and, once completed, the Steensby port. The Monitor is in the process of reviewing those agreements. Interestingly, as noted at para. 60 of the Monitor's Fifth Report, the Debtors' Proposed SISP states that a "Qualified Bid" must provide "a description of the bidder's intentions for the Mine, including as it relates to Steensby Expansion, the engagement of employees both at the Mine and head office, contractors, customers, contracts and vendors under the proposed bid." The Monitor had requested that this section also specifically refer to the bidders' intentions with regard to the royalty agreements, but the Debtors refused to do so. Following the receipt of certain complaints from creditors, the Monitor is assessing the validity of the royalty agreements.

[41] The Debtors submit that they have addressed any concerns raised regarding conflicts of interest. On September 16, 2026, the Operating Committee unanimously adopted an "Independence Mandate." The Independence Mandate is a governance protocol providing for independent members to deliberate and vote where members of the Operating Committee are conflicted. Among other things, the Independence Mandate deems the royalty issue as a conflict, triggering the involvement of the Independent Members.

[42] The Operating Committee has appointed three people, each of whom is unquestionably qualified and experienced, to be the Independent Members:

- a. Jay Goffman, former Head of Restructuring at Skadden Arps, with over four decades of restructuring experience;
- b. Madlyn Gleich Primoff, Co-Head of US Corporate Restructuring at Freshfields, with more than 25 years of experience; and

a sales approval that would, among other things, approve a SISP and authorize a stalking horse purchase agreement. Penny J. granted the order. Penny J. noted, at para. 11, that the Monitor "will administer the stalking horse sales process in consultation with its sales agent and the applicants" and that the Monitor will have "certain consent rights in connection with material decisions, including extending timelines, dispensing with bid requirements, and terminating the stalking horse sales process." See also, *In the Matter of Hakim Optical Laboratory Limited et al* (August 28, 2025) Toronto, CV-25-00743383-00CL (S.C.); *People's Trust Company v. Crown Crest Capital Management Corp. et al.* (June 2, 2025) Toronto, CV-23-00709183-00CL (S.C.).

- c. William Gula, Senior Advisor at Morrison Park Advisors, with over 45 years of investment banking and legal experience.

[43] The Debtors say that the language of the Independence Mandate resolves any potential fiduciary concerns that could arise from the USA. Among other things, the Independence Mandate purports to override the provision in the USA that grants members of the Operating Committee the right, when serving as members, to act in the best interests of the shareholders that nominated them.⁵

[44] Further, the Debtors point to the fact that the SISP terms provide for, among other things, the Monitor's ongoing supervision of the process and require that all material decisions be made in consultation with the CRO, the Transaction Advisor, and the Monitor.

[45] Leaving aside whether it makes sense to bring three more "independent" persons to the party when there is already a CRO, a Transaction Advisor, and the Monitor, the voting structure contemplated for these independent members effectively ensures that EMG (or Arcelor, as the case may be) retains the same number of votes, albeit through an Independent Member.⁶ Further, as EDC noted, EMG and Arcelor handpicked and engaged the Independent Members. EDC points to the selection process that was run for the selection of the CRO -- one that was fair, transparent and led by the Monitor -- and queries why the Independent Members were not proposed through a similar process. Ultimately, the Operating Committee has proposed a complex structure at significant cost to avoid the independent CRO overseeing the SISP. Why? Isn't it preferable for someone who is transaction agnostic to run the process?

[46] As noted numerous times in Court, and by the Monitor in its Report, the entities that have appointed the Operating Committee have a significant financial interest in the Debtors. EMG states

⁵ Section 3.1(c) of the USA provides:

The Shareholders and the Company agree to restrict in whole the powers of the Directors to manage or supervise the management of the business and affairs of the Company. The power to manage or supervise the management of the business and affairs of the Company shall be exercised by the Operating Committee, subject to and made in accordance with this Agreement. The Shareholders intend all decisions relating to the Group to be made or authorized by the Operating Committee and, where required by this Agreement, by Extraordinary Resolution. In (i) exercising any powers of the Directors; (ii) causing its nominees on the Operating Committee to exercise any powers of the Directors; and (iii) exercising any rights as a Shareholder under this Agreement or under applicable Law, each Shareholder may act in its own best interest and approve or disapprove any matter, or authorize or direct its nominees to do so, in its sole discretion, without regard to duties or obligations that otherwise would be applicable. In exercising any powers of the Directors and each OC Member, subject to compliance with this Agreement, act in the best interest of its appointing Shareholder without regard to duties or obligations that would otherwise be applicable. Each Shareholder and the Company irrevocably waives any claims it may have as a result of the foregoing, including a claim for breach of fiduciary duty against each other or against any Director or any OC Member.

John Calvert confirmed that the members of the Operating Committee have not been acting under this provision of the USA during the CCAA proceedings.

⁶ If all three EMG appointees are excluded because of a conflict, the EMG appointee gets three votes.

that it has contributed the most financially to the Debtors, and that it “has an overriding financial interest in the conduct of [the Baffinland CCAA proceeding].” The treatment of those significant financial interests by any successful bid in the SISP would be of paramount concern to EMG and Arcelor. Accordingly, the Secured Creditors have strong concerns regarding whether the Operating Committee can act independently in making key decisions in the SISP even taking into account the newly adopted Independence Mandate.

[47] The Debtors correctly say that under corporate law the shareholders elect the directors, so any board of directors is composed of persons “selected” by the shareholders. That position disregards the nuance here where the Operating Committee is composed solely of appointees of EMG and Arcelor,⁷ equity stakeholders with a massive financial stake in the outcome. Further, Arcelor is the Debtors’ largest iron ore customer.

[48] The Debtors also argued that there must be evidence of “extraordinary circumstances” before a court would strip the Operating Committee of its powers. The Debtors point to *Stelco Inc. (Re)* (2005), 75 O.R. (3d) 5 (C.A.), which was decided before the introduction of section 11.5 (removal of directors) in the CCAA. In *Stelco*, the Court of Appeal overturned the decision below to remove two directors, which the Court of Appeal noted, at para. 51 is an “exceptional remedy.”

[49] However, *Stelco* is distinguishable. *Stelco* was about the removal of directors, which requires extraordinary circumstances. It was not about selection of the appropriate SISP. The SISP approved by the court must be transparent, and fair, and “must be seen to be fair.” *Ivaco Inc., Re*, (2004), 3 C.B.R. (5th) 33 (Ont. S.C.), at para. 15.

[50] The court in *Stelco* addressed a different issue — whether the broad discretion of the court under s. 11 of the CCAA trumps the specific statutory scheme under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44: at paras. 47- 48. The Court of Appeal noted, at para. 72, that the court “[could not] grant itself jurisdiction where it does not exist.” The Court of Appeal of Alberta in *Angus A2A GP Inc. v. Alvarez & Marsal Canada Inc.*, 2026 ABCA 156, at para. 134, succinctly summarized the Ontario Court of Appeal’s decision in *Stelco*:

[...] Rather, the Court [in *Stelco*] held that s. 11 does not grant courts authority in CCAA proceedings to remove directors from a debtor company because the *Canada Business Corporations Act*, RSC 1985, c. C-44 prescribes a process for their removal: *Stelco ONCA* at paras. 47-50. Its core holding is that s. 11 does not authorize the court to make orders where a specific statutory scheme otherwise exists: *Stelco ONCA* at para. 48.

⁷ Paragraph 50 of the Monitor’s Fifth Report states: The Operating Committee is comprised entirely of appointees from NIO’s two shareholder groups: [EMG and Arcelor]. These appointees include (a) Five EMG appointees, including Jowdat Waheed and Bruce Walter, members of the management of the Debtors; and (b) Two [Arcelor] appointees.

[51] In *Angus*, at para. 135, the Court of Appeal of Alberta referred to the fact that some of the management and control powers of the directors had been removed and granted to the monitor, as is done from time to time (so-called “super monitors”). In many ways what EDC and the other creditors seek is similar — removing from the Operating Committee select powers regarding the SISP and granting the CRO such powers, including the power to make ultimate decisions under the SISP.

[52] The Debtors argue that EDC is indirectly seeking a remedy (removal of the Operating Committee) it could have sought (but chose not to) under section 11.5 of the *CCAA*.⁸ That is simply not the case. No person seeks to remove the Operating Committee.

[53] As EDC noted, the selection of the Secured Lenders’ Proposed SISP does not remove the Operating Committee or strip the Operating Committee of all its powers. The Operating Committee is continuing with its business of running the Mine. Under the Secured Lenders’ Proposed SISP the Operating Committee continues to operate the company, but the operation of the sale of the business under court supervision is done by the CRO.

[54] The instant case is also distinguishable from *Hudson’s Bay Company (Re)*, 2025 ONSC 5998. In that case, the order sought would grant the monitor expanded powers so that “it is capable of assuming all the functions currently performed by HBC’s management and board”: at para. 218. Osborne J. (as he then was) noted, at para. 219, that “the relief sought would have practically the same effect as the removal of the directors since the directors would remain in office but have no powers.” Accordingly, he was of the view that s. 11.5 of the *CCAA* would have to be relied upon and such relief was not appropriate or necessary at the time. As noted, in the instant case, the requirement that ultimate decision-making authority under the SISP be exercised by the independent CRO does not strip the Operating Committee from all the functions it performs (or even substantially all the functions).

[55] The requested SISP is a court-ordered process, which the Court controls. The Court has the authority, and I would say the obligation, to ensure that the process is fair, transparent, and even handed. The process must not only be fair but also must “be seen to be fair”: *Ivaco*, at para. 15. That is the fundamental problem with the Debtors’ Proposed SISP – the other stakeholders are concerned that if the Operating Committee is in control, the process may not be fair. They are concerned that the equity holders, who control the Operating Committee, have different end game interests from the creditors, who seek to be repaid their indebtedness.

⁸ Subsection 11.5(1) of the *CCAA* provides as follows:

The court may, on the application of any person interested in the matter, make an order removing from office any director of a debtor company in respect of which an order has been made under this Act if the court is satisfied that the director is unreasonably impairing or is likely to unreasonably impair the possibility of a viable compromise or arrangement being made in respect of the company or is acting or is likely to act inappropriately as a director in the circumstances.

[56] As the Supreme Court of Canada noted in *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379, at para. 70:

...[T]he requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising *CCAA* authority. Appropriateness under the *CCAA* is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*. The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* – avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.

[57] The Court of Appeal in *Stelco*, at para. 72, referred to the fact that “the court at all times retains its broad and flexible supervisory jurisdiction — a jurisdiction which feeds the creativity that makes the *CCAA* work so well — in order to address fairness and process concerns along the way.”

[58] I am satisfied that the Court has jurisdiction under s. 11 of the *CCAA* to order the Secured Lenders’ Proposed SISP to proceed, giving the CRO, in consultation with the Monitor, the ultimate decision-making power for key decisions.

[59] The CRO is a neutral, court-appointed, person. The CRO does not have any skin in the game. The CRO’s compensation will not be impacted by the decisions he makes under the SISP.

[60] The Debtors note that the mandate of the CRO was heavily negotiated. The CRO’s role in respect of the SISP as set out in the CRO mandate does not confer decision-making authority that overrides or displaces the continuing powers of the Operating Committee. As noted in *TNG Acquisition (Re)*, 2013 ONSC 3098, 2 C.B.R. (6th) 272, at para. 31:

A CRO is a creature of Court Order, the authority of which derives from the *CCAA* but the scope of duties and obligations of the CRO are to be found in the Court Order of its appointment.

[61] Again, I would point to the fact that this is a court process. The CRO’s mandate contemplates that he may provide “such other services as may be needed in respect of the Debtors’ restructuring and *CCAA* Proceeding, as determined by the CRO, in consultation with the Monitor and the Operating Committee.” The Court is of the view that in the instant case it makes sense to have a neutral, independent court-appointed officer with final decision-making authority for the SISP. It is fair to all stakeholders, and transparent. The CRO has indicated his willingness to assume the decision-making function proposed by the Secured Lenders in their SISP proposal.

[62] The Debtors submit that the role of the CRO is to make recommendations and not decisions. They point to *Ivaco*, which states, at para. 17, that the role of the CRO is to “make

recommendations”. The recommendations would be made by the CRO to the court, as would be the case here. In *Ivaco*, the court was asked to determine whether the CRO was to be part of the sales process. The applicants, the monitor and the unsecured creditors took the position that the CRO should be part of the sales process, but the QIT and the union took the opposite position. The Court in *Ivaco* accepted the applicants’ proposed sales process, which was supported by the monitor and the major creditors. The Court commented, at para. 19, on the importance of fairness for all the creditors:

[T]here are a number of Applicants with different unsecured creditors for different Applicants. It is necessary that any negotiated sale (or restructuring) take into account such complexities so that fairness is achieved for all the creditors (and is seen to be achieved).

[63] The Debtors also point to the fact that the Court has the final say on whether a proposed successful bid is approved. However, as EDC noted, by the time a successful bid gets to the court for approval, numerous steps will have been taken and decisions made, such as which bidders to engage with (or not), such that any damage will have already been effectively done.

[64] The Debtors’ submission that they will be effectively ousted from the SISP under the Senior Lenders’ Proposed SISP is also inaccurate. The Senior Lenders’ Proposed SISP would place the CRO in the driver’s seat; however, there would still be an obligation for the CRO to consult with the Debtors’ stakeholders. Paragraph 15 of the Senior Lenders’ Proposed SISP provides:

The CRO, and the Monitor, with the assistance of the Transaction Advisor, will update the Debtors’ stakeholders and consult with them, as appropriate, in respect of the SISP, provided that such updates will cease to be provided to any party that does not provide confirmation to the Monitor and CRO that it is a Non-Participating Party (as defined below). All such updates or consultation and any information and documents provided in connection therewith are provided on a strictly confidential basis, provided, however, that Export Development Canada may share such information with Government of Canada representatives, and other parties may share such information as permitted by the terms of their confidentiality agreements with the Company.

[65] I note as an aside that if there is any concern that the above language is ambiguous regarding consultation with the Debtors as well as their stakeholders, the above paragraph may be amended to clarify this:

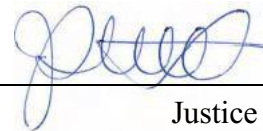
The CRO, and the Monitor, with the assistance of the Transaction Advisor, will update the Debtors and their stakeholders and consult with them [...]

[66] As set out above, one of the factors for the court to consider in determining whether to approve a SISP is the fairness, transparency, and integrity of the proposed process. When weighing the two proposed SISPs, it is clear that the Secured Lenders’ Proposed SISP, where an independent party will exercise decision-making, best meets this objective.

[67] Finally, the Monitor recommends that the Secured Lenders' Proposed SISP be approved, such that the CRO, with the assistance of the Monitor, is empowered to make the key decisions in the SISP. The Monitor states that it "believes that the Secured Lenders' Proposed SISP would better promote fairness, transparency and efficiency on a go-forward basis." I agree.

[68] Baffinland is an important business for Canada's northern region. In addition to the stakeholders I heard from at the motion hearing, there are many other stakeholders who depend on the Mine, including employees, customers, and suppliers. A transparent, and fair SISP, run by the independent CRO, on balance is the best path forward for this company.

[69] The Court was advised that the night before the attendance an agreement was reached with Qikiqtani Inuit Association and Nunavut Tunngavik Inc. and that amendments would be required to whatever SISP the Court selected. Once those amendments have been finalized, the draft order approving the Secured Lenders' Proposed SISP may be sent to my attention.

A handwritten signature in blue ink, appearing to read 'Jana Steele', is written over a horizontal line.

Justice Jana Steele

Date: October 14, 2026