

**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 NUNAVUT IRON ORE, INC., BAFFINLAND IRON
MINES CORPORATION, AND 12334992 CANADA INC.**

Applicants

**FACTUM OF THE APPLICANTS / DEBTORS
(SISP approval motion returnable October 9, 2026)**

September 29, 2026

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Derek D. Ricci (LSO#52366N)
Tel: 416.367.7471
Email: dricci@dwpv.com

Natalie Renner (LSO#55954A)
Tel: 416.367.7489
Email: nrenner@dwpv.com

Lawyers for the Applicants and
Baffinland Iron Mines LP

TO: The Service List

PART I – OVERVIEW

1. Since obtaining CCAA protection on May 15, 2026, the Debtors¹ have indicated their intent to pursue a value-maximizing transaction for the benefit of all stakeholders. This motion seeks approval of a sale and investment solicitation process (“**SISP**”) that has been designed collaboratively, transparently, and in good faith, to achieve that objective.²

2. The SISP is a procedural document that outlines how transaction proposals will be solicited from interested buyers. It is the product of extensive engagement among the Debtors, CRO, Transaction Advisor, Monitor, Monitor’s counsel, DIP Lender, Senior Secured Lenders, Qikiqtani Inuit Association (the “**QIA**”) and Nunavut Tunngavik Inc.

3. The parties have reached consensus on virtually every provision of the SISP. One key issue remains in dispute: Whether ultimate decision-making authority over the SISP should rest with the Operating Committee or the CRO.

4. The DIP Lender seeks unprecedented relief in this regard that is inconsistent with the procedural nature of a SISP. Purporting to rely on a qualified consent right concerning the terms of the SISP that was granted to it as part of the DIP Facility, the DIP Lender now demands the removal of critical decision-making power from the operating mind of the Debtors. In doing so, the DIP Lender is seeking to do indirectly what it knows it cannot achieve directly. This Court has established an appropriately high bar under section 11 of the CCAA that must be cleared before it will interfere in bedrock principles of corporate law and change the decision-making authority of a debtor-in-possession in a CCAA proceeding. However, the

¹ Capitalized terms used but not defined herein have the meaning given to them in the Affidavit of Jowdat Waheed sworn September 17, 2026 [“**Second Waheed Affidavit**”].

² The proposed SISP is included as Schedule “A” to the draft Order [the “**SISP Approval Order**”] at Tab 3 of the Motion Record of the Applicants dated September 17, 2026 [[A7730](#)].

DIP Lender has not even attempted to move directly under section 11.5 to remove the Operating Committee, as was open to it. Nor is the DIP Lender formally seeking an expansion of the CRO's heavily negotiated, court-approved mandate. That mandate manifestly does not confer decision-making power in respect of the SISP on the CRO. Instead, the DIP Lender seeks to achieve the same result indirectly through the SISP. That is a plainly impermissible misuse of the DIP Lender's contractual discretion.

5. The Debtors submit that decision-making authority over the SISP must remain with the Operating Committee. That governance structure has been in place throughout this proceeding and is what the parties agreed to when they finalized the CRO Mandate just weeks ago. That Mandate was heavily negotiated, proceeded on consent, and was approved by this Court on July 29, 2026. It empowers the CRO to advise, recommend, coordinate, and assist, but **not** to exercise final decision-making power over the SISP. Moreover, the structure of the current governance arrangement is unremarkable. It reflects the well-established principle that, absent extraordinary circumstances, decision-making authority in a CCAA proceeding remains with the debtor.

6. Because they cannot point to such exceptional circumstances, the DIP Lender and Senior Secured Lenders raise belated and ill-conceived concerns regarding governance and alleged conflicts involving the Operating Committee. These issues are not new. The alleged conflicts predate both the DIP Settlement and the CRO Mandate, and were already known to the lenders when: (i) the DIP Lender agreed to advance up to US\$475 million to the Debtors; (ii) the DIP Settlement was negotiated and approved by this Court; and (iii) the CRO Mandate was approved by this Court on consent. At none of those junctures did the lenders insist on removing the Operating Committee's decision-making role. Having agreed to the current governance framework at every turn, they should not be permitted to now re-trade.

7. In any event, the Debtors have addressed the concerns of the DIP Lender and Senior Secured Lenders. The Operating Committee has unanimously adopted a robust Independence Mandate (discussed more fully below) that negates any legitimate concerns over conflicts. These concerns should likewise be assuaged by multiple further safeguards (also discussed below) built into the SISP itself. Those provisions ensure robust, customary, and appropriate ongoing roles for each of the CRO, Transaction Advisor and Monitor in the conduct of the SISP.

8. No basis exists on this Motion to indirectly remove the Operating Committee as the directing mind of the Debtors and install the CRO in that role. Accordingly, the Court should approve the SISP proposed by the Debtors.

PART II – SUMMARY OF FACTS

A. THE DEBTORS AND THESE PROCEEDINGS

9. The Debtors are affiliated entities that own and operate the Mary River mine in Nunavut (the “**Mine**”), one of the highest-grade iron ore deposits in the world. The Debtors obtained CCAA protection on May 15, 2026 pursuant to the Initial Order.³

10. The Operating Committee is ultimately responsible for supervising the management of the business and affairs of the Debtors through a series of agreements, including a unanimous shareholders agreement in respect of Nunavut Iron Ore, Inc. (the “**USA**”). Its members are appointed by ArcelorMittal Canada Inc. and funds managed by affiliates of The Energy & Minerals Group, each of which are shareholders of Nunavut Iron Ore, Inc.⁴

³ Second Waheed Affidavit ¶1, 15 [A7450 and A7454].

⁴ Second Waheed Affidavit ¶2, 56 [A7450 and A7471].

B. THE DIP FACILITY AND DIP SETTLEMENT

11. The Debtors required DIP financing to fund ordinary course operations and a proposed SISF during the CCAA proceeding. Following a formal solicitation process that yielded three proposals, the Debtors, in consultation with the Monitor, selected a revolving credit facility of up to US\$475 million from the DIP Lender which was approved by the Court on a final basis on June 30, 2026.⁵

12. The DIP Facility requires no changes in management or in the Operating Committee's decision-making authority as a condition to the availability of funds. Rather, the DIP Facility allows the Debtors to operate their business in the ordinary course.⁶

13. The Senior Secured Lenders initially opposed the DIP Facility, leading to costly litigation. The dispute was resolved by the DIP Settlement, which was approved by the Court on June 30, 2026. The DIP Settlement established a framework for ongoing cooperation by requiring the Debtors, the Monitor, and their respective advisors, including the CRO, to work in good faith with the Senior Secured Lenders in developing a SISF and in considering and reflecting their reasonable comments as appropriate.⁷

C. THE CRO

14. As part of the DIP Settlement, the parties agreed that a CRO and Transaction Advisor would be selected from candidates identified in processes conducted by the Monitor. BlueTree Advisors Inc. was selected to provide the services of William E. Aziz as CRO. The

⁵ Second Waheed Affidavit ¶¶16-17 [[A7454](#)].

⁶ Second Waheed Affidavit ¶18 [[A7455](#)].

⁷ Second Waheed Affidavit ¶¶19-20, 22 [[A7455-A7456](#)].

CRO's appointment and the CRO Mandate were approved by the Court on consent on July 29, 2026—only seven weeks before this motion. Morgan Stanley's selection as Transaction Advisor was approved by the Court on August 27, 2026.⁸

15. The CRO Mandate (reproduced in part below) was heavily negotiated. Its terms make it clear that the Operating Committee would retain decision-making control (including in respect of the SISP) and that the role of the CRO in respect of the SISP is to: (i) advise and provide recommendations to the Operating Committee; (ii) provide input and assistance to the Debtors; and (iii) coordinate with the Transaction Advisor. The CRO Mandate confers on the CRO no decision-making authority that overrides or displaces the continuing powers of the Operating Committee.⁹

D. THE SISP

16. Since their engagements, the CRO and Transaction Advisor have worked with counsel to the Debtors, and in consultation with the Monitor, to develop the SISP. Throughout this process, the Monitor, Monitor's counsel, CRO, and counsel for the Debtors engaged in good faith with the DIP Lender, Senior Secured Lenders, QIA, and Nunavut Tunngavik Inc. regarding the design and terms of the SISP. Reasonable comments from those parties were carefully considered and incorporated.¹⁰

17. The SISP includes an initial marketing and solicitation process and two phases for the evaluation of proposals from qualified bidders. The following significant preparatory work has already been undertaken in respect of the SISP: (i) a form of NDA has been distributed to select potentially interested parties; (ii) site visits to the Mine have been arranged; and

⁸ Second Waheed Affidavit ¶¶23-24, 28 [A7456 and A7458].

⁹ Second Waheed Affidavit ¶¶26-27 [A7457].

¹⁰ Second Waheed Affidavit ¶¶32 [A7459].

(iii) sales process materials are being prepared.¹¹ A chart with the key milestones under the SISP is attached as Schedule “C” to this Factum.

18. The SISP outlines requirements for “Qualified Bids”, including detailed consideration of value, identification of bidders, absence of financing contingencies, evidence of ability to perform, a proposed operating and business plan, and a cash deposit of 5% of total consideration. It also requires any Qualified Bid to treat the IIBA and Commercial Lease with QIA and their embedded agreements as unaffected. The result is that the successful bidder will continue to be bound to all the rights and obligations existing under the IIBA, Commercial Lease and related agreements after the sale process is complete.¹²

19. As noted above, the key issue to be determined is the exercise of final decision-making authority. Mr. Aziz has not made any recommendation on this issue.¹³

E. THE DISPUTE OVER DECISION-MAKING AUTHORITY

20. Under the version of the SISP proposed by the Debtors, the CRO and Transaction Advisor manage the process and the Monitor exercises a supervisory function, all as contemplated by the express terms of the CRO Mandate.¹⁴ However, ultimate decision-making authority, including the selection of Successful Bids and the finalization of any resulting transaction, remains with the Debtors, as directed by the Operating Committee in consultation with the CRO, Monitor and Transaction Advisor.¹⁵ The Debtors cannot terminate the SISP without the consent of both the Monitor and DIP Lender. Any material amendment

¹¹ Second Waheed Affidavit ¶¶36, 39 [A7460 and A7462].

¹² Second Waheed Affidavit ¶43(a)-(l) [A7463-A7465].

¹³ Second Waheed Affidavit ¶34 [A7459].

¹⁴ CRO Mandate, particularly ¶(b), (g) and (h), Exhibit “H” to Second Waheed Affidavit [A7640-A7641].

¹⁵ Second Waheed Affidavit ¶8 [A7452].

requires Court approval.¹⁶

21. In contrast, the lenders argue, based on concerns over the Debtors' governance and alleged conflicts of interest involving members of the Operating Committee and the Royalty Agreements, that final decision-making power in the SISF must rest solely with the CRO and not the Operating Committee.¹⁷

22. These concerns are not new. The lenders have historical lending relationships with the Debtors and have intimate familiarity with their governance structure, which was already in place when the lenders advanced funds or assumed debt obligations. The alleged conflicts involving the Operating Committee and the Royalty Agreements significantly predate by years the DIP Facility, the DIP Settlement and the CRO Mandate.¹⁸

- (a) Indeed, although the DIP Lender now complains about these putative conflicts, they were not viewed as an impediment when the DIP Lender agreed to advance up to US\$475 million to the Debtors.¹⁹
- (b) The Senior Secured Lenders raised these same concerns in filings during the DIP Facility Dispute and nevertheless entered into the DIP Settlement.²⁰
- (c) The Joint Aide Memoire filed by the DIP Lender, Senior Secured Lenders and Debtors as part of the DIP Settlement noted that that Settlement “**affords appropriate protections for the Senior Secured Lenders** that sit alongside EDC’s existing rights as DIP Lender and **establishes a practical mechanism for ensuring that material decisions affecting collateral value are made with the benefit of the Senior Secured Lenders’ input, Monitor oversight and where**

¹⁶ Second Waheed Affidavit ¶80 [A7478].

¹⁷ Second Waheed Affidavit ¶59-60 [A7472].

¹⁸ Second Waheed Affidavit ¶61-62 [A7472].

¹⁹ DIP Facility Loan Agreement, June 3, 2026, ¶14, Exhibit “C” to Second Waheed Affidavit [A7551].

²⁰ Second Waheed Affidavit ¶63 [A7472].

necessary, further Court Direction.”²¹

23. In short, the lenders had the opportunity to address and resolve their current concerns: (i) as an element of the DIP Facility; (ii) as part of the DIP Settlement; or (iii) in the provisions of the CRO Mandate. Nothing material has changed since the DIP Facility was granted, the DIP Settlement was entered into, or the CRO Mandate was approved by this Court.²² It strains credulity for the lenders to now cite these concerns as a basis for usurping the authority of the Operating Committee.

F. THE INDEPENDENCE MANDATE AND SISF SAFEGUARDS

24. Despite the foregoing, the Operating Committee has nevertheless taken proactive steps to address the concerns voiced by the DIP Lender and Senior Secured Lenders. Most notably, on September 16, 2026, the Operating Committee unanimously adopted the Independence Mandate. A copy of the Mandate was provided in draft form to the Monitor weeks prior to finalization.²³

25. The Independence Mandate is a special-purpose governance protocol that excludes conflicted members of the Operating Committee from receiving information and from deliberating or voting on conflict matters, and ensures that any such member is replaced by a replacement member (an “**Independent Member**”) who qualifies as “independent” within the meaning of section 1.4 of National Instrument 52-110.²⁴ Each of the three Independent Members who have been appointed possesses significant experience and expertise: (a) Jay Goffman, former Global Head of Restructuring at Skadden Arps, with over four decades of restructuring experience; (b) Madlyn Gleich Primoff, Co-Head of US Corporate Restructuring

²¹ Joint Aide Memoire, June 28, 2026, ¶12 [emphasis added], Exhibit “F” to Second Waheed Affidavit [A7624].

²² Second Waheed Affidavit ¶65-66 [A7473].

²³ Second Waheed Affidavit ¶69-70 [A7474].

²⁴ Second Waheed Affidavit ¶69-72 [A7474-A7475].

at Freshfields, with more than 25 years of experience; and (c) William Gula, Senior Advisor at Morrison Park Advisors, with over 45 years of investment banking and legal experience. Each has confirmed their independence, and no element of their compensation is conditional on any decisions they make as Independent Members in respect of the Debtors.²⁵

26. The lenders' challenges to the efficacy and necessity of the Independence Mandate are without merit:

- (a) *First*, any potential fiduciary concerns that might arise from the USA are conclusively resolved by the express language of the Independence Mandate;²⁶
- (b) *Second*, any objection to the Independent Members' stipends being paid by members of the Operating Committee is risible given that the DIP Lender would not allow these funds to be included in the Debtors' cash flows;²⁷ and
- (c) *Third*, it is not true that the appointment of Independent Members is duplicative or unnecessary because their role could be filled by the CRO. Given that the case at bar is a debtor-in-possession process, the continued involvement of the Operating Committee is a critical element of the restructuring.²⁸ The Operating Committee's role should not be assumed by the CRO absent extraordinary circumstances. The Operating Committee is entitled to exercise its business judgment, and this Court should not lightly interfere with the proper exercise of that business judgment.

27. In addition to the Independence Mandate, the SISP includes multiple layers of oversight, including: (i) the Monitor's ongoing supervision of the process; (ii) the requirement

²⁵ Second Waheed Affidavit ¶¶74-78 [A7476-A7478].

²⁶ Although section 3.1(c) of that USA grants members of the Operating Committee the extraordinary right, when serving as members, to act in the best interests of the shareholder that nominated them, it is critical to recognize that section 2(f) of the Independence Mandate explicitly overrides this *sui generis* provision. More specifically, section 2(f) states that section 3.1(c) does not apply to any "Member" of the Operating Committee—*i.e.*, either a current member or Independent Member—during the pendency of the CCAA Proceedings. See Independence Mandate dated September 16, 2026, s 2(f), Exhibit "K" to the Second Waheed Affidavit [A7656].

²⁷ Affidavit of John Calvert dated September 23, 2026 ["Calvert Affidavit"], ¶22 [A7746-A7747].

²⁸ Calvert Affidavit, ¶¶25-28 [A7747-A7748].

that all bidder communications be directed through the CRO, Transaction Advisor or Monitor; (iii) the requirement that all decisions be made in consultation with the CRO and, in most cases, in consultation with the Transaction Advisor and Monitor; (iv) restrictions on sharing confidential information with any party that has not irrevocably confirmed it is not participating as a bidder; and (v) the requirement that any material amendment to the SISP be approved by the Court.²⁹

PART III – THE ISSUES

28. The sole issue on this motion is whether the Court should grant the SISP Approval Order in the form proposed by the Debtors. The Debtors submit respectfully that it should.

PART IV – LAW & ARGUMENT

A. THE SISP SHOULD BE APPROVED

29. Section 11 of the CCAA authorizes this Court to approve a sale process in relation to the business and assets of a CCAA debtor prior to or in the absence of a plan of compromise and arrangement.³⁰ In *Nortel*, this Court identified the factors to be considered in determining whether to approve a sales process. Those factors, which apply equally to a sale investment and solicitation process,³¹ include whether: (i) a sale is warranted at this time; (ii) the sale will benefit the whole “economic community”; (iii) creditors have a *bona fide* objection to a sale of the business; and (iv) there is a better viable alternative.³²

30. Additional considerations will apply if and when the Debtors seek approval of a transaction. Although section 36 of the CCAA applies only to the approval of a sale, and not

²⁹ Second Waheed Affidavit ¶¶79-81 [[A7478-A7479](#)].

³⁰ *Nortel Networks Corporation (Re)*, [2009 CanLII 39492 \(ON SC\)](#) ¶¶47-48 [*“Nortel”*]; CCAA at ss. [11](#) and [36](#).

³¹ *Re a Plan of Compromise or Arrangement of Green Growth Brands Inc.*, [2020 ONSC 3565](#) ¶¶61.

³² *Nortel*, *supra*, ¶¶49.

to a sales process³³, the *Nortel* criteria for approving a sales process should be evaluated in light of those section 36 considerations that may ultimately apply when approval is sought for a concluded sale.³⁴ As such, this Court is also entitled to consider whether the proposed SISP is likely to satisfy the requirements that: (i) the process is fair; (ii) the best price has been obtained; (iii) the Monitor supports the SISP; and (iv) the creditors were consulted, as well as other relevant factors.³⁵

31. Courts have also considered: (i) the fairness, transparency and integrity of the proposed process; (ii) the commercial efficacy of the proposed process in light of the specific circumstances; and (iii) whether the sales process will optimize the chances in the circumstances of securing the best possible price for the assets up for sale.³⁶

32. The SISP should accordingly be approved, including because:

- (a) A sale is warranted at this time. Since the outset of this CCAA proceeding, the Debtors have sought to pursue a value-maximizing transaction. It has been over four months since the Debtors filed for CCAA protection and it is both timely and appropriate for the SISP to be approved;
- (b) The SISP will benefit the whole economic community as it allows the CRO and Transaction Advisor to solicit bids for a broad range of transaction alternatives involving the business and assets or shares of the Debtors, including sales, investments, and recapitalization transactions. The alternative to a transaction would be liquidation, which would result in the closure of the Mine and the loss of over 1,200 jobs;
- (c) There is no *bona fide* reason for creditors to object to a sale process. The Debtors

³³ *Brainhunter Inc. (Re)*, [2009 CanLII 72333 \(ON SC\)](#) ¶17 [*"Brainhunter"*].

³⁴ *Brainhunter*, *supra*, ¶16.

³⁵ CCAA, s. [36\(3\)](#).

³⁶ *Walter Energy Canada Holdings, Inc.*, [2016 BCSC 107](#) ¶20-21 [*"Walter Energy"*].

have consulted with their stakeholders on the design of the SISP, and the stakeholders support the implementation of a sales process;

- (d) There is no better viable alternative to a sale process. The SISP has been designed with the input of the Transaction Advisor, CRO, Monitor and stakeholders to canvass the broadest possible range of executable transaction alternatives and optimize the chances of securing a value-maximizing transaction;
- (e) The SISP is fair, transparent, and commercially efficacious. It is designed to provide a flexible, fair, and transparent framework for canvassing the market for the Debtors' shares, assets, and business. The terms of the SISP are clear and bidders are given explicit guidance on bid criteria, deadlines, and the process for submitting bids; and
- (f) The SISP is likely to satisfy the considerations under section 36 of the CCAA. The process is designed to secure the best possible price, the Monitor supports a sale process, and the Debtors' creditors and other stakeholders have been consulted in connection with the SISP's design.

33. Overall, the approval of the SISP is harmonious with the policy and purpose of the CCAA, including the goal of facilitating going-concern restructurings and avoiding the social and economic costs of liquidations.³⁷ Each of the *Nortel* factors is satisfied, and the SISP meets the requirements of fairness, transparency, integrity, and commercial efficacy. For these reasons, the Court should approve and authorize the SISP.

B. FINAL DECISION-MAKING POWER OVER THE SISP SHOULD REMAIN WITH THE OPERATING COMMITTEE

34. There are at least three reasons why this Court should reject the demand by the DIP Lender and Senior Secured Lenders that decision-making powers be forcibly removed from

³⁷ *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#) ¶15.

the hands of the Operating Committee and transferred to the CRO.

- (a) The presumption in CCAA proceedings is that, absent truly extraordinary circumstances, control of a distressed company remains in the hands of its directors. No exceptional circumstances exist which justify the overturning of this bedrock presumption.
- (b) Mere weeks ago, the parties finalized the CRO Mandate and jointly obtained its approval by this Court.³⁸ That Mandate granted the CRO a purely recommendatory and advisory role, while leaving decision-making authority in the hands of the Operating Committee. Nothing has changed in the interim that would justify a reversal of this unanimously supported arrangement.
- (c) Although paragraph 27 of the DIP Facility grants discretionary authority to the DIP Lender to approve elements of the SISF, it is required to act “reasonably” in exercising this power.³⁹ There is nothing “reasonable” about its current efforts to upend the governance *status quo* and resile from the agreed-upon division of powers in the absence of any proper reason for doing so.

35. Each of these factors is addressed below.

(i) The Status Quo Reflects the Presumption that—Absent Extraordinary Circumstances—Ultimate Decision-Making Authority Remains with the Debtors’ Directors During Restructuring

36. At present, ultimate decision-making authority over the Debtors’ restructuring rests with the Operating Committee. In contrast, the CRO has been granted consultative, advisory and recommendatory powers. This division reflects and affirms the normative governance structure in which control over the business and affairs of a distressed company presumptively remains in the hands of its directors or a committee of its board.

³⁸ CRO Appointment Order, July 29, 2026, Exhibit “G” to Second Waheed Affidavit [\[A7630\]](#).

³⁹ DIP Facility Loan Agreement, June 3, 2026, ¶127, Exhibit “C” to Second Waheed Affidavit [\[A7564\]](#).

37. As explained by the Court of Appeal for Ontario in its seminal *Stelco* ruling, a court overseeing a CCAA proceeding must proceed cautiously before exercising its statutory authority in a manner that interferes with the decision-making of the distressed corporation's incumbent directors: "[This] interpretation of s. 11...is consistent with the purpose and scheme of the CCAA..., and with the fact that corporate governance matters are dealt with in other statutes. In addition, it honours the historical reluctance of courts to interfere in such matters, or to second-guess the business decisions made by directors and officers in the course of managing the business and affairs of the corporation."⁴⁰

38. As the Court of Appeal explained, this reluctance to interfere is consistent with the principle that most CCAA restructurings are led by the company itself:

The company's role in the restructuring, and that of its stakeholders, **is to work out a plan or compromise** that a sufficient percentage of creditors will accept and the court will approve and sanction. The corporate activities that take place in the course of the workout are governed by the legislation and legal principles that normally apply to such activities. ... **[T]he court is not entitled to usurp the role of the directors and management in conducting what are in substance the company's restructuring efforts** [emphasis added].⁴¹

39. This principled refusal "to usurp the role of the directors...in conducting...the company's restructuring efforts" has been reaffirmed by leading commentators,⁴² the Court

⁴⁰ *Stelco Inc. (Bankruptcy)*, Re, [2005 CanLII 8671](#) (ON CA) ¶42 [*"Stelco"*].

⁴¹ *Stelco*, *supra*, ¶44.

⁴² Myers & Kolla, "Directors' Charges Under the CCAA: Where are We Going and Why?", *2008 Annual Review of Insolvency Law 1*, ed. Sarra (Westlaw), at p. 4 (electronic version): "***Stelco*...recognizes the primacy of the company in a debtor-centric restructuring process**" [emphasis added].

of Appeal,⁴³ and this Court.⁴⁴

40. There are, of course, exceptions to the presumption that a corporation's board will retain the authority to oversee its restructuring. For example, if the existing directors have resigned *en masse*, are clearly guilty of serious misconduct, or are otherwise incapable or unwilling to guide the corporation through the CCAA process, alternative decision-makers can be appointed. In a recent canvassing of the leading jurisprudence, one group of commentators summarized this principle as follows: "[I]t appears that in order for management to be 'transferred' to a third party [such as a CRO], management and the board of directors *must essentially be non-existent and incapable of functioning in a fiduciary capacity, rendering the company functionally 'dead' in the purview of the court.*"⁴⁵

41. It is clear that no such extraordinary disqualifying factors are present in the current proceeding. As explained above, the concerns with governance and conflicts are not only overstated but have been pro-actively negated through the robust governance protocols established by the Operating Committee and the multiple layers of oversight incorporated into the proposed SISF.

42. When the factors required to displace a board are not present—as is true in the immediate proceeding—our Courts are rightly hostile to efforts to use the appointment of a CRO as a “backdoor” vehicle for improperly divesting decision-making authority from a

⁴³ *Stelco Inc., Re*, [2005 CanLII 40140](#) (ON CA) ¶26 (“While...the ultimate decision is for the creditors, **the board of directors plays an important role in the restructuring process. Blair J.A. made this clear** in an earlier appeal [where he observed that:] ‘...**the court is not entitled to usurp the role of the directors and management in conducting what are in substance the company’s restructuring efforts**’”) [emphasis added].

⁴⁴ *Re Crystallex Internat. Corp.*, [2011 ONSC 7701](#) (CanLII) ¶28 (“There is no evidence...that...the Noteholders’ Plan...is the best or the only possible means of raising money..., and **for a court at this stage to require that to be done would in my view be impermissibly usurping the power of the board of directors of Crystallex in its restructuring efforts**”) [emphasis added].

⁴⁵ Burnell, Warga, Skelly & Sandhu, “Zombie Companies Arise!,” *2021 Annual Review of Insolvency Law* 20, ed. ARIL Society (Westlaw) at p. 10 (electronic version) [emphasis added].

corporation's directors. In one such decision, *Pascan Aviation*, the Quebec Superior Court refused to endorse the appointment of a CRO on terms that would have allowed the CRO to undertake "any and all acts...in connection with the restructuring" of the company "*without the intervention of the directors.*" As the Court noted, the goal of the petitioners was "the disengagement of the current directors, who *for all intents and purposes would be stripped of their powers.*"⁴⁶

43. As the Court observed, this was not a case where the incumbent directors had resigned *en masse* such that a CRO was obligated to take over the board's responsibilities. Moreover, although the petitioners raised concerns that the directors might not fulfil their fiduciary duties, the Court was satisfied that such issues could be policed adequately by the Monitor.⁴⁷ As Justice Castonguay concluded: "[T]he Petitioners are...asking that the Court...confer on the CRO *powers that are exceptional for such a position. ...The scope of the powers sought...for the CRO is more like the powers of a receiver than those normally vested in a CRO. ...[S]tripping the directors of their powers in favour of a CRO...is not the standard applied by the courts.*"⁴⁸

44. Similarly, in *Hudson's Bay*, Justice Osborne refused to grant powers that would have effectively enabled the Monitor to assume functions performed by the debtors board. As the Court observed, such relief would have "practically the same effect as the removal of directors", a remedy that requires satisfaction of the high threshold in section 11.5. Because no director had so acted, the relief was "neither necessary nor appropriate."⁴⁹ This Court

⁴⁶ *Pascan Aviation inc. (Arrangement relatif à)*, [2015 QCCS 4227](#) ¶4-5, 30, 37 [emphasis added] [unofficial English translation provided by CanLII] ["*Pascan*"].

⁴⁷ *Pascan*, *supra*, ¶61, 72-76.

⁴⁸ *Pascan*, *supra*, ¶54-55, 77, 79-80 [emphasis added].

⁴⁹ *Re Hudson's Bay Company*, [2025 ONSC 5998](#) ¶217-220.

should apply the reasoning endorsed in *Pascan Aviation* and analogous cases, and reject the lenders' efforts to replace the Operating Committee with the CRO.

45. What these lenders are effectively seeking is the *de facto* removal or displacement of the Operating Committee as the directing mind of the Debtors. If that is their goal, it is incumbent on them to bring an application under section 11.5 of the CCAA and attempt to prove to this Court “that [each] 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.”⁵⁰ It is telling that the lenders have opted not to move under section 11.5.

46. Our Courts have explained that an applicant relying on section 11.5 must overcome a “significant threshold” if it is to obtain this “extreme form of judicial intervention”—*i.e.*, the removal of one or more directors or the usurping of the board’s authority. In order to displace the directors, an applicant under section 11.5 must establish, on a balance of probabilities, based on “a careful examination of the actions of the directors in the context of the particular restructuring process” and bearing in mind the objectives of the CCAA, that members of the board have committed or are likely to commit the requisite forms of misconduct. Such allegations require cogent evidence and must be sufficiently serious that the concerns raised cannot otherwise be addressed under the corporation’s internal policies or through the intervention and oversight of the Court and Monitor. Significantly, an application under section 11.5 cannot succeed merely because an applicant disagrees with the decision-making of the incumbent directors. Nor is removal justified by the fact that the existing board has not

⁵⁰ CCAA, s. [11.5\(1\)](#).

achieved an outcome that satisfies the complaining party.⁵¹

47. The DIP Lender and Senior Secured Lenders have not moved under section 11.5 because they recognize they cannot satisfy these stringent prerequisites. Indeed, the lenders have failed to offer any credible evidence in support of their extraordinary request that the Operating Committee be stripped of its decision-making power.

48. Although it was issued prior to the enactment of section 11.5, the Court of Appeal's ruling in *Stelco* is highly instructive in the case at bar given the lenders' attempts to oust the Debtors' decision-makers based on speculative concerns. In *Stelco*, the Court of Appeal emphasized the impropriety of removing the directors of a distressed corporation in the absence of properly substantiated complaints regarding their conduct. As Justice Blair explained: "The motion judge...simply decided there was a risk—a reasonable apprehension—that [they] would not live up to their obligations to be neutral in the future."⁵² The Court ruled that a mere "apprehension" was entirely insufficient to "usurp" the powers of the directors in light of their *prima facie* role as critical decision-makers during the restructuring process.⁵³ In the submission of the Debtors, this is the precise precautionary principle that should guide this Court in deciding whether to approve the SISP in the form that has been placed before it.

(ii) The DIP Lender is Seeking to "Unreasonably"—and therefore Impermissibly—Exercise the Discretionary Power Granted to it under Paragraph 27 of the DIP Facility

49. Paragraph 27 of the DIP Facility was negotiated between the Debtors and the DIP

⁵¹ *Quest University Canada (Re)*, [2020 BCSC 318](#), at ¶¶50-69, quoting in part from *Unique Broadband Systems Inc. (Re)*, (unreported, January 25, 2012), ¶¶32-37 and also citing *Crystallex International Corp. (Re)*, [2012 ONSC 2125](#), ¶¶71, *aff'd*, [2012 ONCA 404](#). See also *Bluberi Gaming Technologies Inc. (Arrangement relatif à)*, [2015 QCCS 5373](#), at ¶¶30-32.

⁵² *Stelco*, *supra*, ¶¶57.

⁵³ *Stelco*, *supra*, ¶¶44, 58-61, 74-77.

Lender and was approved by this Court on June 30, 2026. It confers on the DIP Lender certain discretionary approval rights regarding the final form of the SISP—*i.e.*, the “form and substance” of the SISP must be “acceptable to the DIP Lender” and “[a]ll terms of the SISP, including all Milestones, must be acceptable to the DIP Lender in its reasonable discretion.”⁵⁴ The exercise of that power is constrained by the (express and implied) obligation that the DIP Lender act reasonably in exercising its discretion. That obligation cannot be reconciled with the DIP Lender’s current efforts to circumvent and override the terms of the CRO Mandate to which it consented mere weeks ago.

50. Canadian law is well-acquainted with contractual provisions that require a party possessing a discretionary power to “act reasonably”—or, analogously, to not act “unreasonably”—in exercising such authority. The meaning ascribed to such language is clear and well understood. A party subject to such a constraint must act in a manner that is objectively appropriate (applying the “reasonable person” standard). Whether that standard is satisfied turns on an assessment of: (i) the provisions of the agreement in which the phrase appears; (ii) the commercial realities of the relevant marketplace; (iii) the facts that are reasonably known to the party who is required to act “reasonably” at the date of the conduct in question; and (iv) the reasons given by that person for acting as they did. Significantly, contractual power will not be found to have been exercised “reasonably” if it is motivated by a “collateral purpose” aimed at obtaining an unbargained-for benefit or if the rationale for the exercise of discretion is unfounded.⁵⁵

⁵⁴ Paragraph 27 further requires the Debtors to work with the Monitor to identify a financial advisor whose selection, scope of services, and compensation is “acceptable to the DIP Lender in its reasonable discretion”. See DIP Facility Loan Agreement dated June 3, 2026, at ¶27, Exhibit “C” to the Second Waheed Affidavit [[A7564](#)].

⁵⁵ See, *inter alia*, *Welch Foods Inc. v. Cadbury Beverages Canada Inc.*, [2001 CanLII 24009](#) (ON CA) ¶[44](#), [47](#), [50](#), [61](#), [67](#); and *Rabin v. 2490918 Ontario Inc.*, [2023 ONCA 49](#) ¶[6](#), [32-36](#).

51. The jurisprudence that has interpreted contractual provisions requiring a party to “act reasonably” is buttressed and affirmed⁵⁶ by a second body of law that addresses situations in which a party is authorized to exercise a contractual discretionary power *in the absence of* any explicit requirement of “reasonable” conduct. The law is clear that, even in this latter scenario, the party granted the discretionary power must act “reasonably.” This means that the power granted must not be exercised “capriciously,” “arbitrarily,” “for an improper purpose” or in a manner that is “ulterior or extraneous” to the parties’ shared “interests and expectations.” In brief, in order to “exercise that discretion reasonably,” such a party must act in a manner that is consistent with the purpose for which the authority was granted at first instance by the parties to the agreement.⁵⁷

52. It is clear that the current effort by the DIP Lender to override or circumvent the agreement embodied in the CRO Mandate is unreasonable. It is inconsistent with the purposes for which the DIP Lender was granted its approval rights under paragraph 27 of the DIP Facility. More specifically, the DIP Lender is seeking to engage a consent right concerning a SISP—a procedural and typically uncontroversial document—for the ulterior or extraneous purpose of effecting extraordinary change in the governance of the Debtors, while circumventing the otherwise high bar established by the Court of Appeal and CCAA for achieving that sort of extraordinary change. Such conduct should neither be encouraged nor rewarded by this Court. As a result, the form of SISP proffered by the Debtors should be

⁵⁶ Indeed, this Court has applied the test applicable when a contract **lacks** an express “reasonable” conduct requirement to circumstances where such language is **present**. See, for example *1797472 Ontario Inc. v. Independent Electricity System Operator*, [2024 ONSC 2130](#) ¶¶34, 40 (“A reasonable exercise of discretion under a contract is one that is exercised with regard to a purpose that reflects the parties shared interests and expectations”), *aff’d* [2024 ONCA 808](#), ¶¶7-8, 31.

⁵⁷ *Wastech Services Ltd. v. Greater Vancouver S & D Dist.*, [2021 SCC 7](#) ¶¶4-7, 48-53, 57-88, 96-107 (majority reasons), esp. ¶¶62, 64, 75, 86; see also ¶¶128-135 (concurring reasons); *Royal Bank of Canada v. Peace Bridge Duty Free Inc.*, [2025 ONCA 54](#) ¶¶56, 61; *Spina v. Shoppers Drug Mart Inc.*, [2024 ONCA 642](#), ¶¶167-189. See also the earlier but consistent analysis in *Quickie Conven. Stores Corp. v. Parkland Fuel Corp.*, [2020 ONCA 453](#) ¶ 30.

approved.

(iii) The CRO Mandate Makes Clear that Mr. Aziz Does Not Possess Final Decision-Making Authority Over the SISP

53. It is only in the clearest and most extraordinary of cases that a concerned creditor can justifiably ask this Court to displace incumbent directors as decision-makers and have them replaced by the company's CRO. This is particularly true in circumstances where—as in this case—the transferring of such powers is wholly at odds with the clear terms of the CRO Mandate that was only recently agreed to by the parties and endorsed by this Court. The lenders' improper efforts to re-trade their own previous bargain represents a further reason why their demands should be rejected.

54. As Justice Campbell explained more than a decade ago: “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.*”⁵⁸ It is therefore critical to evaluate the demands made by the DIP Lender and Senior Secured Lenders in light of the terms of the governing CRO Mandate that were recently blessed by this Court. Those provisions are entirely consistent with the “usual” governance structure applicable in CCAA proceedings, as discussed above.

55. The CRO Mandate enumerates Mr. Aziz's “duties” to include the following:

- (a) “[A]**dvising** and **providing recommendations to the Operating Committee**”, and “**providing** input, **recommendations** and assistance **to the Debtors**”, in connection with *inter alia*: (i) “the development of a [SISP]”; (ii) “updates regarding material developments in the SISP”; (iii) “the development of a

⁵⁸ *TNG Acquisitions (Re)*, 2013 ONSC 3098 ¶31 [emphasis added] [“**TNG**”]. Based on the specific facts of that proceeding, the CRO was granted sweeping authority to carry out the business and management functions of the distressed company with the goal of liquidating its assets for the benefit of its creditors (see *TNG*, *supra*, ¶17).

restructuring plan or plans of the Debtors”; and (iv) “potential strategic options and financial restructuring alternatives”;⁵⁹

- (b) “[A]ssisting with the negotiation of, and executing,” both NDAs and the financial advisor’s engagement letter in the context of the SISP, as well as “**coordinating with**” the financial advisor and others “on the resources and information needed to effect the SISP” and “**managing negotiations** and **communications** involving” the creditors and others “in connection with the CCAA Proceeding”;⁶⁰ and
- (c) “[W]orking with the Monitor to **coordinate** the foregoing restructuring activities”.⁶¹

56. In short, both with respect to the SISP and more generally, the authority expressly granted to Mr. Aziz *qua* CRO empowers him to assist, to coordinate, to provide certain services, and—most critically—to offer his “*advi[ce]*” and “*recommendations*” regarding the SISP. What is conspicuously absent is final decision-making powers over such critical matters as the identification of successful bids or the finalization and implementation of resulting transactions. These powers are not included because the parties never agreed that such authority was or would be vested in the CRO.⁶²

57. This analysis is not altered by the inclusion in the CRO Mandate of an additional provision that empowers the CRO to “provid[e] ***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.***”⁶³ It is far from clear that “other services” could include the exercise by the CRO of final decision-making power. More

⁵⁹ CRO Mandate ¶(b).c., (b).d., (b).e., (b).f., (c), Exhibit “H” to Second Waheed Affidavit [A7640] [emphasis added].

⁶⁰ CRO Mandate ¶(e), (f), (g), (h), Exhibit “H” to Second Waheed Affidavit [A7640-A7641] [emphasis added].

⁶¹ CRO Mandate ¶(m), Exhibit “H” to Second Waheed Affidavit [A7641] [emphasis added].

⁶² Calvert Affidavit, ¶28 [A7748].

⁶³ CRO Mandate ¶(o), Exhibit “H” to Second Waheed Affidavit [A7641] [emphasis added].

importantly, and in any event, any purported exercise of this provision must be triggered by Mr. Aziz (rather than the lenders), and he has made no move to do so.⁶⁴

58. It is impossible to interpret the CRO Mandate as suggesting that anyone other than the Operating Committee retains decision-making power over the SISP. The provisions quoted above confirm that view both directly and by implication. The CRO Mandate would have been framed very differently if the intention was to supplant the Operating Committee as decision-maker and replace it with the CRO.

59. The case law is to the same effect. In the seminal ruling of this Court in *Ivaco*, Justice Cumming underlined the importance and value of a CRO's active participation in the restructuring process but also explained that the core of the CRO's responsibility was recommendatory in nature: "The CRO's attendance and participation in the sales process is critical because he is the independent party who must understand all the various bids and weigh each against the possibility of a stand-alone restructuring. *He must ultimately **make recommendations** that engender confidence as being advanced on the best information and advice possible.*"⁶⁵

60. To similar effect is *Cannabist Company*, where a CRO was retained in a purely augmentative capacity. More specifically, the CRO was appointed not to lead or control the restructuring process, but merely to: (i) "provide financial advisory and restructuring support services to the Company"; (ii) "advis[e] on restructuring alternatives"; (iii) "provide oversight and assistance"; (iv) "evaluate and make recommendations in connection with strategic alternatives as needed"; and (v) "perform such other services as requested or directed by the

⁶⁴ Second Waheed Affidavit, ¶67 [A7473-A7474].

⁶⁵ *Ivaco Inc. (Re)*, 2004 CanLII 34434 ¶17 [emphasis added].

Company.”⁶⁶

61. The mandate granted to the CRO in *Cannabist* bears a marked resemblance to the list of powers and responsibilities granted to Mr. Aziz under the heavily negotiated CRO Mandate in the case at bar. The late-breaking attempt by the DIP Lender and Senior Secured Lenders to resile from their own previous agreement on this issue is invidious and should not be countenanced by this Court.

62. There may be cases where broader CRO powers are appropriate, but those cases involve extreme facts, such as the resignation of all directors and the absence of employees with the expertise to oversee the restructuring, bearing no resemblance to the present circumstances. In *Walter Energy*, faced with precisely such facts, the Court found it “not just desirable, but indeed necessary” to appoint a CRO with “enhanced powers”.⁶⁷ No such exigency exists here. The Operating Committee remains in place, actively engaged, and fully capable of discharging its decision-making responsibilities.

PART V – ORDER SOUGHT

63. The Applicants respectfully request that the proposed SISP Approval Order be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of September, 2026.



DAVIES WARD PHILLIPS & VINEBERG LLP

⁶⁶ *The Cannabist Company Holdings Inc.*, [2026 ONSC 2063](#) ¶15-17, 21.

⁶⁷ *Walter Energy*, *supra*, ¶19, 25-31. See also *Aveos Fleet Performance (arrangement relative à)*, [2013 QCCS 5924](#) ¶17. Where a board resigns *en masse* mid-way through a restructuring, the original authority of the CRO can be expanded as necessary. See *NextPoint Financial, Inc. (Re)*, [2023 BCSC 2378](#) ¶5.

SCHEDULE “A”

List of Authorities

Secondary Authorities

1. Burnell, Warga, Skelly & Sandhu, “Zombie Companies Arise!,” *2021 Annual Review of Insolvency Law* 20, ed. ARIL Society (Westlaw, electronic version).
2. Myers & Kolla, “Directors’ Charges Under the CCAA: Where are We Going and Why?,” *2008 Annual Review of Insolvency Law* 1, ed. Sarra (Westlaw, electronic version).

Caselaw

3. *1797472 Ontario Inc. v. Independent Electricity System Operator*, [2024 ONSC 2130](#), *aff’d* [2024 ONCA 808](#)
4. *Aveos Fleet Performance (arrangement relatif à)*, [2013 QCCS 5924](#)
5. *Bluberi Gaming Technologies Inc. (arrangement relatif à)*, [2015 QCCS 5373](#)
6. *Brainhunter Inc. (Re)*, [2009 CanLII 72333 \(ON SC\)](#)
7. *Century Services Inc. v. Canada*, [2010 SCC 60](#)
8. *Crystallex International Corp. (Re)*, [2011 ONSC 7701](#)
9. *Crystallex International Corp. (Re)*, [2012 ONSC 2125](#), *aff’d*, [2012 ONCA 404](#)
10. *In Re Hudson’s Bay Company*, [2025 ONSC 5998](#)
11. *Ivaco Inc. (Re)*, [2004 CanLII 34434](#)
12. *NextPoint Financial, Inc. (Re)*, [2023 BCSC 2378](#)
13. *Nortel Networks Corporation (Re)*, [2009 CanLII 39492 \(ON SC\)](#)
14. *Pascan Aviation inc. (arrangement relatif à)*, [2015 QCCS 4227](#) [unofficial English translation provided by CanLII]
15. *Quest University Canada (Re)*, [2020 BCSC 318](#)
16. *Quickie Convenience Stores Corp. v. Parkland Fuel Corp.*, [2020 ONCA 453](#)
17. *Rabin v. 2490918 Ontario Inc.*, 2023 ONCA 49
18. *Re a Plan of Compromise or Arrangement of Green Growth Brands Inc.*, [2020 ONSC 3565](#)
19. *Royal Bank of Canada v. Peace Bridge Duty Free Inc.*, [2025 ONCA 54](#)

20. *Spina v. Shoppers Drug Mart Inc.*, [2024 ONCA 642](#)
21. *Stelco Inc., Re*, 2005 [CanLII 40140 \(ON CA\)](#)
22. *Stelco Inc. (Bankruptcy), Re*, [2005 CanLII 8671 \(ON CA\)](#)
23. *TNG Acquisitions (Re)*, [2013 ONSC 3098](#)
24. *The Cannabist Company Holdings Inc.*, [2026 ONSC 2063](#)
25. *Unique Broadband Systems Inc. (Re)*, (unreported, January 25, 2012)
26. *Walter Energy Canada Holdings, Inc.*, [2016 BCSC 107](#)
27. *Wastech Services Ltd. v. Greater Vancouver S & D Dist.*, [2021 SCC 7](#)
28. *Welch Foods Inc. v. Cadbury Beverages Canada Inc.*, [2001 CanLII 24009 \(ON CA\)](#)

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the *Rules of Civil Procedure*, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (R. 4. 06. 1 (2.2)).

September 29, 2026

Date



Signature

SCHEDULE “B”

Legislation

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 11, 11.5 and 36.

General Power of the 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.

...

Removal of directors

11.5 (1) 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.

Filling vacancy

(2) The court may, by order, fill any vacancy created under subsection (1).

...

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

- (a) a director or officer of the company;
- (b) a person who has or has had, directly or indirectly, control in fact of the company; and
- (c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

SCHEDULE “C”

Event	Timing
Preparation of Marketing Materials CRO and the Transaction Advisor, under the supervision and oversight of the Monitor, to prepare marketing materials and a process letter (the “ Process Letter ”) containing, among other things, the key milestones under the SISP.	This process is underway
NDA Solicitation CRO and the Transaction Advisor, under the supervision and oversight of the Monitor, to solicit interest from parties to enter into NDAs	This process is underway
Access to Virtual Data Rooms (“VDR”) The CRO and the Transaction Advisor, under the supervision and oversight of the Monitor, to prepare and provide applicable parties with access to one or more VDRs	VDRs to be populated following granting of the SISP Approval Order; access granted only following execution of an NDA
LOI Bid Deadline Deadline for parties to submit initial non-binding letters of intent	A date to be identified in the Process Letter, which date may be extended by the Transaction Advisor and the CRO with the consent of the Monitor and the DIP Lender
Invitation to Participate in Phase 2 The CRO and the Transaction Advisor, under the supervision and oversight of the Monitor, to invite one or more qualified parties from Phase 1 to conduct detailed due diligence	Following the LOI Bid Deadline
Qualified Bid Deadline Deadline for Phase 2 Parties to submit a Qualified Bid	11:59 p.m. prevailing Eastern Time on a date to be determined by the Transaction Advisor and the CRO, with the consent of the Monitor and the DIP Lender (as may be extended)
Finalization of Definitive Agreements The Debtors, in consultation with the CRO and with the assistance of the Transaction Advisor and other advisors, to finalize any necessary definitive agreement(s) with respect to the Successful Bid(s) or Back-Up Bid	Following selection of a Successful Bid

Event	Timing
Transaction Approval Order The Debtors to apply to the Court for an order approving a Successful Bid	Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized

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.

Applicants

Court File No. CL-26-00000219-0000

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

Proceeding Commenced at Toronto

**FACTUM OF THE APPLICANTS / DEBTORS
(SISP approval motion returnable October 9, 2026)**

DAVIES WARD PHILLIPS & VINEBERG LLP

155 Wellington Street West
Toronto ON M5V 3J7

Derek D. Ricci (LSO# 52366N)
Email: dricci@dwpv.com

Natalie Renner (LSO# 55954A)
Email: nrenner@dwpv.com

Tel: 416.863.0900
Fax: 416.863.0871

Lawyers for the Applicants and Baffinland Iron Mines LP