

**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.

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TO: **THE SERVICE LIST**

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FACTUM OF EXPORT DEVELOPMENT CANADA

PART I - INTRODUCTION

1. Export Development Canada (“**EDC**”) opposes the Debtors’ motion for approval of their proposed Sales and Investment Solicitation Process (“**SISP**”) on one narrow but important issue: who is given decision-making authority over the SISP.

2. EDC’s proposal is that ultimate authority over the SISP should rest with the independent Chief Restructuring Officer or alternatively the Monitor. Put simply, EDC seeks to have a court officer empowered to make the critical decisions on how the SISP should proceed.

3. In contrast, the Debtors seek to have their own Operating Committee – each member of which is a representative of a shareholder - exercise decision-making power in the SISP.

4. The jurisprudence is clear that a SISP must proceed in a manner that is and is seen to be fair, transparent and even-handed. Independent oversight is particularly critical on these facts:

(a) The Debtors have in excess of US\$1.2 billion in secured debt commitments, and the repayment of these obligations is entirely dependent on the outcome of the SISP; and

(b) Equity holders have emphasized their overriding economic interest in this case, stated a desire to retain control of the Debtors, and are incentivized to accept greater transaction risk if it could result in equity recovery.

5. The issue on this motion is critical: who will make decisions about who can be a bidder, how the sales process unfolds, who the Debtors negotiate with and what deal points will be pursued.

6. The goal of the SISP must be to maximize value for all stakeholders, and only an independent party, agnostic to any particular transaction, can fairly make this decision. As court officers, the CRO and/or the Monitor can fulfill this role.

7. The Debtors have belatedly recognized the conflict and have now sought to appoint a new set of “independent” advisors to run the SISP. Each shareholder selected, engaged and paid for its own individual appointee. They are not independent in fact or under securities law. These new appointees do not resolve the conflicts; they perpetuate them.

8. More importantly, the vigor with which the Debtors oppose having a Court Officer exercise control of the SISP should be seen as a red flag. Why is this a problem? How does it make sense to bring in a new set of untested decision-makers?

9. These questions are more perplexing given EDC’s contractual consent rights over the SISP. The Debtors’ attempt to force through a SISP over the objection of EDC will result in a default under the DIP. Again, that cannot possibly be in the best interests of the Debtors and their stakeholders.

10. EDC asks that this Court approve its form of SISP, which is both fair and commercially sensible. It is consistent with many, many prior decisions of this Court and others in which control of the SISP is given to an independent Court Officer who seeks to maximize returns for all.

PART II - SUMMARY OF FACTS

A. Baffinland’s capital structure

11. In aggregate, the pre-filing and post-filing secured funded debt commitments of Baffinland exceed US\$1.2 billion. Baffinland’s main pre-filing secured funded debt obligations are:

- (a) EDC's US\$75 million term credit facility that is fully drawn;
- (b) A Senior Credit Facility entered into on May 26, 2017 and assigned on November 24, 2025 to Oaktree Capital Management LP and Hartree Partners LP. The Senior Credit Facility presently involves a US\$126.5 million term loan as well as letters of credit with an aggregate face amount of CDN\$75.2 million; and
- (c) 8.75% senior secured notes of \$575 million aggregate principal amount, issued June 27, 2018.¹

12. Baffinland is currently in default under each of these secured debt arrangements, which have matured and have not been repaid.²

13. There is currently no certain path to full repayment of Baffinland's secured obligations.³ Indeed, the CRO is entitled to an increasing success fee as recoveries exceed secured debt of Baffinland.⁴

14. The equity of Baffinland is ultimately held by Energy & Minerals Group ("**EMG**") (approximately 74.8%) and by ArcelorMittal (approximately 25.2%) through the parent company, Nunavut Iron Ore Inc. ("**Nunavut IO**").⁵

15. These equity holders (and/or their affiliates) have entered into two royalty agreements (the "**Royalties**") with Baffinland which require Baffinland to pay a fixed royalty per metric tonne of iron ore shipped. The first of the Royalties was entered into on March 25, 2024 under which Baffinland

¹ Affidavit of Ashley Glen sworn September 21, 2026 at para 6 (**Glen Affidavit**).

² Glen Affidavit at para 7.

³ Glen Affidavit at para 4.

⁴ Glen Affidavit at para 49(c).

⁵ Glen Affidavit at para 8.

received aggregate consideration of \$100 million. The second of the Royalties was entered into on December 23, 2024 under which Baffinland received aggregate consideration of \$200 million.

16. Creditors have expressed concern to the Monitor that the consideration paid for the Royalties was less than fair value. EDC shares those concerns.⁶

B. Baffinland's governance

17. Nunavut IO is subject to a unanimous shareholders agreement (the "**USA**") that replaces the board's decision-making authority with an Operating Committee. EMG has appointed five members of the Operating Committee, and ArcelorMittal has appointed two members of the Operating Committee.⁷

18. The Operating Committee has in the past sought to avoid the duties and responsibilities of a corporate board. The USA explicitly permits each member of the Operating Committee to "act in the best interest of its appointing Shareholder without regard to duties or obligations that would otherwise be applicable."⁸ In anticipation of this hearing, and by way of an amendment adopted on September 16, 2026, the operation of this provision is to be suspended during these proceedings.⁹

⁶ Appendix D to the Fourth Report of the Monitor dated August 25, 2026, p 74.

⁷ Glen Affidavit at paras 13-15.

⁸ Glen Affidavit at para 41, referring to section 3.1(c) of the USA.

⁹ Independent Member Mandate dated September 16, 2026 (**Independent Mandate**), Exhibit K to the Affidavit of Jowdat Waheed sworn September 17, 2026 (**Waheed Affidavit**), Motion Record of the Applicants dated September 17, 2026 (**MRA**), pp 212-217.

C. Baffinland files for CCAA protection to address cash flow and operational challenges

19. Baffinland's severe financial distress is well documented in the record. Nunavut IO reported a net loss of \$545.1 million for 2025, and Baffinland's liabilities exceed its assets by \$761 million. The Debtors "remain unable to generate sufficient cash flow to cover their fixed operating costs and service their outstanding debt obligations at the current capped production levels."¹⁰

20. The Debtors sought CCAA protection on May 14, 2026. Given the state of Baffinland's balance sheet, its operational challenges, and its insolvency, Baffinland required significant interim DIP financing just to sustain operations while it pursued a SISP.¹¹

D. The EDC DIP

21. On June 30, 2026, Justice Steele reconfirmed approval of the EDC DIP Facility Agreement. Under the DIP Facility Agreement, EDC provides a multiple-draw term loan facility up to a maximum principal amount of US\$400 million, increasing to US\$475 million in certain circumstances. At this time, approximately US\$230 million has been advanced under the DIP Facility Agreement.¹²

22. EDC's offer to provide DIP financing was expressly tied to Baffinland's commitment to pursue the SISP. Given that Baffinland's business could not generate profits to repay its secured debt, the DIP financing was specifically subject to provisions governing the SISP – a mechanism that would enable recoveries to the outstanding debt.¹³

¹⁰ Glen Affidavit at paras 17-18.

¹¹ Glen Affidavit at para 19.

¹² Glen Affidavit at para 24.

¹³ Glen Affidavit at para 23.

23. In a letter delivered prior to the commencement of these proceedings, EDC explained the importance of a fair and transparent SISP:

EDC believes in the significant benefits Baffinland's operations provide and can continue to provide to all stakeholders and the community. This requires an immediate and comprehensive restructuring to put the company's debt and capital structure in a position where much needed expansion capital can be provided. EDC wants to be part of a comprehensive solution that makes sense for all stakeholders.

A comprehensive solution can only be achieved in the context of a fair and transparent process to identify and implement the best available restructuring transaction, whether through a sale, investment or other reorganization.¹⁴

24. EDC's focus on the SISP was shared by other Secured Creditors who wished to ensure that the SISP unfolded fairly, transparently and in an even-handed manner. The terms of interim DIP financing were the subject of significant dispute among the Debtors, EDC and other Secured Creditors. These disputes were ultimately settled, and the DIP Settlement contained terms directly relevant to the SISP, including among others that:

- (a) The parties agreed that the Monitor, the DIP Lender and the Secured Creditors would select a financial advisor to conduct the SISP. The Debtors were given the right to object if they did not agree with the selection; and
- (b) The parties also agreed that the Monitor, the DIP Lender and the Secured Creditors would select a Chief Restructuring Officer to also be involved in the SISP, again the Debtors were given the right to object.

25. In short, the Debtors were required to pursue the SISP without delay and in accordance with certain defined milestones.

¹⁴ Glen Affidavit at para 25.

26. Critically, for purposes of this hearing, section 27 of the DIP Facility Agreement requires that the terms of the SISP must be acceptable to EDC, in its reasonable discretion:

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.¹⁵

27. This provision is consistent with terms other potential DIP financing sources demanded, which required that the SISP be in form and substance acceptable to those DIP lenders.¹⁶

E. The Role of the Operating Committee under the Debtors' proposed SISP

28. The Debtors' proposed SISP is not acceptable to EDC as DIP Lender.

29. The Debtors' proposed SISP provides that each key decision affecting the outcome of the SISP and the recoveries of creditors is to be made by the Debtors, and more particularly the Operating Committee:

- (a) Section 7 allows the Operating Committee to waive compliance with certain requirements for a "Qualified Bid" set out in section 6 of the SISP;
- (b) Section 8 authorizes the Operating Committee to determine: (i) which Qualified Bids to negotiate; (ii) whether to proceed to auction; and (iii) whether to take steps to finalize and consummate the successful bid(s); and

¹⁵ Glen Affidavit at para 26.

¹⁶ Glen Affidavit at para 27.

- (c) Section 8 further states that the “Debtors have no obligation to conclude a sale or other transaction arising out of this SISP”.¹⁷

30. EDC has proposed a form of SISP that grants the CRO ultimate decision-making authority for two key reasons:

- (a) The CRO is a restructuring expert who is both experienced in these matters and independent—the CRO is agnostic to the structure and terms of any transaction so long as it is fair, reasonable, executable and value maximizing. That transaction may or may not provide recoveries to equity holders; and
- (b) The Operating Committee is comprised of representatives of one stakeholder group whose interests are to seek transactions that advance the objectives of equity holders and holders of the Royalties. It is not agnostic to the structure of a transaction emerging from the SISP.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

31. The issue on this motion is whether the Court should approve:

- (a) EDC's form of SISP, which gives the CRO, with the assistance of the Monitor, decision-making authority over the SISP, or
- (b) the Debtors' form of SISP, which gives that authority to the Operating Committee.

32. EDC's submissions are two-fold:

¹⁷ SISP, Exhibit B to the Waheed Affidavit, MRA, pp 98-99.

- (a) EDC's proposal is plainly fairer and more reasonable than what is being proposed by the Debtors; and
- (b) EDC is exercising its contractual protections reasonably and its rights (which were approved by the Court) should be upheld.

A. EDC's proposal is the prudent approach

The Applicable Law

33. This Court has wide discretion under section 11 of the CCAA to make “any order that it considers appropriate in the circumstances” on application of persons interested in the matter.¹⁸ The Court's section 11 discretion includes making orders to approve SISP's with a view to ensuring the proper administration and determination of a SISP considering the interests and concerns of all stakeholders involved.¹⁹ Moreover, the Court routinely exercises its discretion to order that decision-making authority over a SISP rest with someone other than the debtor's board of directors.²⁰

34. When considering approval of a SISP, the Court is focused on ensuring that there is “a fair, transparent and commercially efficacious process”.²¹ The decisions speak to a process with “integrity” that “must be seen to be fair”.²²

¹⁸ *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36.

¹⁹ *Walter Energy Canada Holdings, Inc. (Re)*, [2016 BCSC 107](#) at paras [20-21](#) (*Walter*); *PCAS Patient Care Automation Services Inc. (Re)*, [2012 ONSC 2840](#) at paras [17-19](#) (*PCAS*).

²⁰ See, for example: *CFFI Ventures Inc.* [SISP](#); *Toys “R” Us (Canada) Ltd.* [SISP](#); *Hakim Optical Laboratory Limited* [SISP](#); *Sunterra SISP*; *Crown Crest SISP*; *1057863 B.C. Ltd.* [SISP](#); *Chesswood Group Ltd.* [SISP](#); *Indiva Limited* [SISP](#); *TBS Acquireco Inc.* [SISP](#); *Harbour Grace Ocean Enterprises Ltd.* [SISP](#); *Teal Jones Holdings Ltd.* [SISP](#); *Blue Lobster Capital Limited* [SISP](#); *2675970 Ontario Inc.* [SISP](#); *CannaPiece Group Inc.* [SISP](#); *Humble & Fume Inc.* [SISP](#); *CanadaBis SISP*.

²¹ *PCAS* at paras [17-19](#); *Walter* at para [20](#).

²² *Ivaco Inc. (Re)*, [2004 CanLII 34434 \(ONSC\)](#) at paras [15-16](#) (*Ivaco*).

35. EDC proposes that the CRO have ultimate authority over the SISP. This is plainly sensible. The Debtors have acknowledged that the CRO is “highly experienced”, “well-qualified” and independent.²³

36. The CRO is a Court Officer with duties to all stakeholders. He does not advance a particular stakeholder’s interest in the SISP. He is compensated in part based on his ability to achieve results and his potential success fee does not favour one particular type of transaction over another.²⁴

37. The reasons why a CRO is well placed to run a SISP were canvassed by Justice Cumming in *Ivaco Inc. (Re)*:

[15] There are certain fundamentals to a CCAA proceeding relevant to a determination of the issue at hand. First, there cannot be a sales process whereby one unsecured creditor secures a secret benefit or advantage over the other unsecured creditors. Such a result would be the equivalent of providing a preference for that creditor. Fairness to all the creditors is a prerequisite to a satisfactory sales process. Second, the sales process must be seen to be fair. That is, there must be transparency.

[17] 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. The CRO is an active part of the negotiations in the sales process. He is not involved as a relatively passive observer in the manner of the Monitor.

[18] The sales process has been determined by the Applicants with the approval of the Court. The CRO represents the Applicants in that process. [...] ²⁵

38. Justice Cumming’s observations apply with particular force here. In a process in which various bids may benefit different stakeholder groups, having the CRO determine the outcome of

²³ Factum of the Applicants dated July 28, 2026 (**Applicant Factum**) at para 27(d).

²⁴ Glen Affidavit at para 49(c).

²⁵ *Ivaco* at paras [15-16](#).

the process is critical to ensure no one stakeholder is advantaged over another. It is necessary for the process both to be fair and to be seen to be fair.

39. Yet, the Debtors and the Operating Committee strenuously fight against having an experienced, independent party run the SISP. This, in and of itself, should raise concerns.

40. Fairness and transparency of the SISP from the outset, and the market's confidence in that fairness and transparency from the outset, are of critical importance to a successful outcome. Bidder participation will only be maximized if those bidders believe the process they are participating in will be administered and determined with integrity: fairly, transparently and free from conflict. In contrast, conflict and process concerns will dissuade bidders from participating and putting their best bid forward. This issue cannot be retroactively resolved at the end of the SISP once the results are known.

41. Similarly, if the process of the SISP is flawed due to conflicts, the impact of those conflicts upon key decisions that have determined the direction and outcome of the process cannot be unwound at the end of the process when a sub-optimal transaction is put forward for approval.

Debtors rely on the Wrong Jurisprudence

42. In support of their argument against a CRO-run process, the Debtors rely heavily on a series of cases that involve courts "usurping the power of the board of directors".²⁶

43. The cases involve very different issues:

(a) In *Stelco*, the Court's removal of two directors from the Board was at issue;²⁷

²⁶ *Re Crystallex International Corporation*, 2011 ONSC 7701 at para 28.

²⁷ *Stelco Inc. (Bankruptcy)*, Re, 2005 CanLII 8671 (ON CA) at paras 7-9 (*Stelco*).

(b) In *Pascan Aviation*, the relief was “stripping the directors of their powers”,²⁸ and

(c) In *Hudson’s Bay*, the relief would have “practically the same effect as removal of the directors”.²⁹

44. This jurisprudence is of no help to the Debtors for several reasons.

45. First, the SISP is a court process approved by court order – it is not the ordinary business of a corporation. In making an order that the CRO has ultimate decision-making authority, the Court is exercising control over its own process. It is not seeking to run the Debtors’ business.

46. Second, and relatedly, there is no attempt to usurp the powers of the board here. The cases relied upon by the Debtors involve the Court’s removing directors or stripping them of their power. EDC is not seeking such relief.

47. Similarly, section 11.5 of the CCAA has no application since it addresses the removal of a director. The directors of the Debtor are irrelevant – they have been sidelined entirely by the Operating Committee. More importantly, the issues are far narrower: who has ultimate authority over the outcome of the SISP and how should an obvious conflict of Operating Committee members be managed.

48. Courts routinely adjust a debtor’s decision-making protocols to alleviate specific process concerns in the CCAA context. It is a recognition that the protection afforded the debtor is balanced with Court oversight. As the Alberta Court of Appeal recognized this year in *Angus A2A v. Alvarez & Marsal*:

²⁸ *Pascan Aviation inc. (Arrangement relatif à)*, [2015 QCCS 4227](#) at para [79](#).

²⁹ *In Re Hudson’s Bay Company*, [2025 ONSC 5998](#) at para [219](#).

[133] Courts undoubtedly have statutory authority to grant monitor powers to manage and control debtor companies, and the most plausible source of that authority is s 11 of the CCAA: Vern W DaRe & Alfonso Nocilla, "Bestriding the Narrow World: Is It Time to Bifurcate the Role of the CCAA Monitor?" (2020) 18 Annual Rev Insolvency L 224 at 236-239; *Arrangement relatif à 9323-7055 Québec inc (Aquadis International Inc)*, [2020 QCCA 659](#) at para [68](#); *Mantle Materials Group, Ltd (Re)*, [2024 ABKB 19](#) at para [66](#). ...

[134] The Texas LLCs rely on the Ontario Court of Appeal's decision in *Stelco Inc (Re)*, [2005 CanLII 8671](#) (ONCA) [*Stelco ONCA*] to support the proposition that courts lack authority to grant a monitor powers of management In our view, that decision is distinguishable. ... 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.

[135] That issue does not arise in the present appeals. Here, the Initial Order did not remove the directors of the Texas LLCs -- it removed some of their powers of management and control and granted them to the Monitor, an issue not addressed by *Stelco ONCA*. Insofar as *Stelco ONCA* may be read as doubting the courts' statutory authority to grant such powers to a monitor, it has been overtaken by later developments. It predates the more frequent use of "super-monitors" and the 2009 amendments to the CCAA, which expanded monitors' functions and duties.³⁰

49. Third, the specific governance concerns identified in the cases – that the board of directors is being usurped – do not arise here. The Debtors do not have a functioning Board: the powers of Baffinland's Board have been delegated to the shareholder nominees on the Operating Committee. The Debtors have chosen a corporate structure that avoids Board oversight and accompanying statutory fiduciary responsibilities. Having done so, the Debtors cannot invoke the primacy of the Board to avoid judicial oversight.

50. Fourth, and relatedly, *Stelco* speaks to "the court's well-established deference to decisions made by directors and officers in the exercise of their business judgment".³¹ While this is not the key consideration when a court determines how to fairly construct the sale process for the reasons set out above, EDC's proposal does not run afoul of this principle. EDC is proposing that the

³⁰ *Angus A2A GP Inc v Alvarez & Marsal Canada Inc*, [2026 ABCA 156](#) at paras [133-135](#).

³¹ *Stelco* at para [51](#).

exercise of business judgment be undertaken by the CRO – the Chief Restructuring Officer appointed by the Debtors. As Justice Cumming stated in *Ivaco*: “The CRO represents the Applicants in that process.”³² In short, nothing is being usurped. The decision will be made by the Debtors’ own representative.

The Conflicts of Interest

51. While EDC’s proposal that the CRO manage the SISP is manifestly fair, the Debtors’ proposal is not. The suggestion that the Operating Committee ought to make the ultimate decisions under the SISP raises serious conflict of interest issues.

52. First, the Operating Committee is composed of representatives of the equity holders, who are stakeholders in this proceeding. The equity holders repeatedly assert that they have advanced more than \$2 billion and view themselves as having an overriding economic interest in the case and an important seat at the table.³³ Clearly, having one stakeholder exercise ultimate control over the SISP is incongruent with a fair, transparent and even-handed process. This concern is particularly acute given the very significant debt: equity holders will be naturally incentivized to pursue higher risk outcomes in an attempt to preserve speculative equity value, even if that imperils creditor recoveries. An independent decision-maker does not face those same incentives.

53. Second, EMG – whose nominees comprise the majority of the Operating Committee – has made clear its preference on the transaction structure to be pursued.

54. In June, EMG expressed “the strong view” that the best interests of stakeholders would be served by “a transaction to recapitalize and/or restructure the Applicants’ business.”³⁴ Given

³² *Ivaco* at para 18.

³³ Glen Affidavit at para 40.

³⁴ EMG Written Submissions at para 4.

EMG's position as an equity holder, such an outcome could be far more favourable than a straight sale. Again, EMG's natural preference is for an approach that takes on higher risk for higher potential reward. For that reason, EMG stated that it was "EMG's respectful position that a SISP should not be commenced until the Applicants have been given a reasonable opportunity to come to an agreement with their key stakeholders in order to develop a restructuring and/or recapitalization plan that will be in the best interest of all their stakeholders."³⁵

55. EMG has now tried to walk back its opposition to a SISP in Mr. Calvert's September 23, 2026 affidavit. This retraction does not solve the problem. The difficulty is that the equity holders, and their representatives on the Operating Committee, are not transaction agnostic. They will benefit from certain structures over others. Again, a fair, transparent and even-handed SISP requires that it be run by a party who is transaction agnostic.

56. Third, the impugned Royalty Agreements create further misalignment of incentives. The Operating Committee, with representatives appointed by the Royalty holders, has a clear incentive to favour transactions that preserve the Royalties to the detriment of other creditors' recoveries. The Operating Committee cannot impartially negotiate or select a sale or investment transaction that would dictate the treatment of these Royalties.

The Debtors' Arguments on the Conflicts of Interest

57. The Debtors attempt to address these conflicts with various arguments. In EDC's view, the Debtors' position reinforces the conclusion that these conflicts are not being and cannot be managed by the Debtors.

³⁵ EMG Written Submissions at para 21.

58. First, the Notice of Motion and the Affidavit of Mr. Waheed, the CEO of Baffinland, refer repeatedly to “alleged conflicts”. There is no actual acknowledgement by the Debtors or the Operating Committee that there is a problem. In these circumstances, it should come as no surprise that their attempt to address these conflicts is mere window dressing.

59. The Debtors rely on the recent appointment of three new Operating Committee members, asserting that they are independent and can adjudicate any conflicts that arise.³⁶ This is not a solution.

60. By the terms of their mandate, these so-called independents only become involved if there is a “Conflict”, in which case the “Conflicted Members” are to recuse themselves. However, a person is only a “Conflicted Member” if they self-select or if a concern is raised by another member of the Operating Committee. Put otherwise, the members of the Operating Committee determine whether they are conflicted – and the rhetoric in this proceeding suggests that they will downplay any potential issue as merely an “alleged conflict”.³⁷

61. Where a conflict is identified, the protocol that has been established provides that the replacement “independent” nominee will have the number of votes equal to the number of members excluded by the conflict. Thus, if EMG has three members excluded by conflict, Mr. Goffman (EMG’s nominee) would cast three votes.

62. This structure is designed to ensure that EMG does not lose its influence by having only one “independent” member. And the fact that EMG seeks to exert this influence cuts against any

³⁶ Independent Mandate, Waheed Affidavit, MRA, pp 212-217.

³⁷ Independent Mandate, Waheed Affidavit, MRA, p 212.

suggestion that its representative – or any of the representatives – are impartial. There are other red flags.

63. The three new Operating Committee members are selected, engaged and paid by their respective appointing shareholders, not by the Debtors. These are not independents. EMG claims this was a “practical necessity” because EDC, as DIP lender, would not approve these fees in the Debtors’ cash flow forecast.³⁸ This may explain why the equity holders are footing the cost, but it does not explain how these representatives were selected and engaged. The new Operating Committee representatives were handpicked by equity holders.

64. The terms of engagement are yet another red flag. The amounts paid vary dramatically and, in some cases, seem on their face excessive for a standby role. For example, EMG has appointed Jay Goffman and is paying him US\$100,000 per month while affording itself the ability to terminate him at any time on 30 days’ notice.³⁹

65. The Debtors rely heavily on the fact that these “independent” members qualify as “independent” per section 1.4 of *National Instrument 52-110*. That section addresses independence vis-à-vis the “issuer” or Baffinland. The Debtors failed to appreciate that applying the standard of independence makes clear that these members are not independent from their nominating shareholder.

66. Subsection 1.4(3) of *National Instrument 52-110* deems the following individual not to be independent: “an individual who received, or whose immediate family member who is employed as an executive officer of the issuer received, more than \$75,000 in direct compensation from the

³⁸ Calvert Affidavit at para 22.

³⁹ EMG Engagement Letter dated September 17, 2026, Exhibit N to Waheed Affidavit, MRA, p 245.

issuer during any 12 month period within the last three years”. While each of the “independent” members could be considered independent vis-à-vis Baffinland, their payment terms mean they are not independent of their appointing shareholders.⁴⁰

67. The Debtors argue that any conflict of interest has been apparent for some time. Mr. Waheed argues in his affidavit these concerns around governance are not “new”.⁴¹ While that might be the truth, the conflicts are unresolved and now being directly engaged by the SISP. Put otherwise, governance and conflict concerns are now an acute problem given that the Debtors have defaulted on \$1.2 billion in secured debt and these conflicts may impact the Debtors’ ability to repay their obligations.

A Fair, Transparent and Even-handed Process

68. For the SISP to be fair and to be seen to be fair, having the CRO oversee the process is obviously preferable. He is experienced, independent and transaction agnostic.

69. He is also now familiar with Baffinland’s business and operations. By contrast, the three new appointees to the Operating Committee are new to Baffinland’s business. Again, the fact that the Debtors insist on onboarding new advisors to avoid having an independent party run this process should be extremely concerning.

70. The suggestion that EDC’s proposal is contrary to the CRO Mandate is incorrect. The CRO Mandate is silent on the role of the CRO in implementing the SISP. It speaks in detail about the CRO’s involvement in the development of the SISP but does not speak to the CRO’s role in its implementation. The Debtors have proposed that the CRO actually administer the SISP but

⁴⁰ *National Instrument 52-110 Audit Committees*, s 1.4.

⁴¹ Waheed Affidavit at paras 9, 11, 60, 64, 69, MRA, pp 5, 11, 30, 32.

subject to the ultimate decisions of the Operating Committee. In other words, both the Debtors and EDC seek to clarify the role of the CRO in the implementation of the SISP because the CRO Mandate does not address this point. If the Court has concerns about either the CRO or the Monitor undertaking this role, EDC is content to proceed with either one of them as decision-maker for the SISP.

B. EDC's contractual protections should be respected

71. EDC bargained for the right to exercise reasonable discretion in respect of the SISP, including how transaction decisions are made. EDC bargained for these rights because they served as an important protection in circumstances in which EDC was advancing amounts that could exceed US\$400 million.

72. The Debtors, led by the Operating Committee, agreed to EDC's approval rights and those rights were approved by this Court. Specifically, the Debtors agreed that "All terms of the SISP, including all Milestones, must be acceptable to the DIP Lender in its reasonable discretion."⁴²

73. This grant of discretion was clear and no aspect of the terms of the SISP was excepted. It was on this basis that EDC has advanced over US\$200 million to date. None of this is contested.

74. The order approving the DIP Facility is one of the foundational components of this proceeding, and one of its critical "building blocks". As Justice Morawetz observed in the Target CCAA proceeding, these foundational orders must be respected:

The CCAA process is one of building blocks. In this [proceeding], a stay has been granted and a plan developed. During these proceedings, this court has made a number of orders. It is essential that court orders made during CCAA proceedings be respected. In this case, the Amended Restated Order was an order that was heavily negotiated by sophisticated parties. They knew that they were entering into

⁴² DIP Facility Loan Agreement dated June 3, 2026, Exhibit C to Waheed Affidavit, MRA, p 122. Emphasis added.

binding agreements supported by binding orders. Certain parties now wish to restate the terms of the negotiated orders. Such a development would run counter to the building block approach underlying these proceedings since the outset.⁴³

75. The parties knew that one of the matters to be resolved in the SISF terms would be decision-making authority. The practice of the Court varies. In some cases, it is the debtor; in many others it is the Monitor or CRO.⁴⁴ It is not disputed that EDC has a consent right – the issue is whether EDC is exercising its right reasonably.

76. A SISF that is not reasonably acceptable to EDC is a material default under the DIP Facility Agreement that would justify EDC's exercise of rights and remedies and, at a minimum, modifications to the existing funding arrangements. This risks destabilizing the restructuring process that is otherwise operating with the support of a predictable and sound DIP funding arrangement.

EDC is acting reasonably

77. To succeed on their motion, the Debtors will have to demonstrate that EDC is exercising its discretion unreasonably. Unless EDC is found to be exercising its discretion unreasonably, there is no contractual basis to override EDC's discretion.⁴⁵

78. The Supreme Court of Canada confirmed in *Wastech* how exercises of contractual discretion alleged to be made in bad faith should be assessed: "the duty to exercise contractual discretion in good faith requires the parties to exercise their discretion in a manner consistent with the purposes for which it was granted in the contract."⁴⁶ As the Supreme Court explained, "the

⁴³ *Target Canada Co. (Re)*, [2016 ONSC 316](#) at para [81](#).

⁴⁴ *Supra* note 20.

⁴⁵ *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District*, [2021 SCC 7](#) at para [4](#) (*Wastech*).

⁴⁶ *Wastech* at para [63](#).

touchstone for measuring whether a party has exercised a discretionary power in good faith is the purpose for which the discretion was granted.”⁴⁷

79. The Court is to consider the surrounding circumstances at the time of negotiation of the contract when assessing the purpose for which discretion was bargained for.⁴⁸ The relevant factual circumstances, which are by now well known to this Court, included:

- (a) Baffinland was in extreme financial distress and required bridge financing on an emergency basis. If Baffinland did not receive substantial bridge financing and DIP funding, its ability to maximize operating capacity during the four-month operating season in which it is able to ship iron ore out of Milne Inlet would be in serious jeopardy. Any failure to maximize operating capacity would significantly worsen Baffinland’s financial and operational problems;
- (b) EDC was being asked to extend a significant amount of credit: in excess of US\$400 million;
- (c) Baffinland was operating at significant losses and the only reasonable mechanism for EDC to be repaid was the SISP;
- (d) EDC specifically identified the SISP as a critical precondition to the DIP Facility and bargained for specific rights in respect of the SISP;
- (e) Competing DIP proposals also contained the same rights vis-à-vis the SISP – in other words, the protections obtained by EDC were market; and

⁴⁷ *Wastech* at para [70](#).

⁴⁸ See, eg, *Convocation Flowers Incorporated v Anisa Holdings Ltd*, [2025 ONSC 401](#) at para [21](#); *Sattva Capital Corp v Creston Moly Corp*, [2014 SCC 53](#) at paras [56-61](#).

- (f) Baffinland's equity and royalty holders, on the other hand, likely had conflicting interests in the potential outcomes of a SISP.

80. Accordingly, EDC sought consent rights in respect of the SISP as a means to manage the substantial risk it was undertaking.

81. EDC's objections to the Debtors' proposed form of SISP are clearly reasonable. It seeks to ensure a fair, transparent and even-handed process in accordance with the jurisprudence of this Court and recognizing that such a process is most likely to result in a value maximizing transaction.

82. The Court should not interfere with EDC's discretion lightly, given the circumstances in which that discretion was bargained for and the fact that it is being exercised here entirely in line with the commercial purpose for which it was granted.

83. Nothing in the negotiation of the CRO Mandate fetters the discretion that EDC bargained for in the DIP Facility. EDC's protections regarding the SISP were agreed to on June 3, 2026, weeks before the CRO Mandate was negotiated and adopted. There is no evidence to suggest that EDC waived its right to exercise discretion over the SISP, through negotiation of the CRO Mandate or otherwise, particularly given (i) that the CRO Mandate is silent on who would make SISP decisions and (ii) the open-ended nature of the CRO Mandate in any event.

PART IV - ORDER REQUESTED

84. EDC's proposal manages the risks created by the Operating Committee's conflicts by relying on the independence and qualifications of the Monitor and CRO. EDC therefore requests an order dismissing the Debtors' motion for approval of their proposed SISP, and an order approving EDC's proposed form of SISP.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of October, 2026.



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SCHEDULE "A"
LIST OF AUTHORITIES

1. *Angus A2A GP Inc v Alvarez & Marsal Canada Inc*, [2026 ABCA 156](#)
2. *Convocation Flowers Incorporated v Anisa Holdings Ltd*, [2025 ONSC 401](#)
3. *Re Crystallex International Corporation*, [2011 ONSC 7701](#)
4. *In Re Hudson's Bay Company*, [2025 ONSC 5998](#)
5. *Ivaco Inc. (Re)*, [2004 CanLII 34434 \(ON SC\)](#)
6. *Nelson Education Limited (Re)*, [2015 ONSC 3580](#)
7. *Pascan Aviation inc. (Arrangement relatif à)*, [2015 QCCS 4227](#)
8. *PCAS Patient Care Automation Services Inc. (Re)*, [2012 ONSC 2840](#)
9. *Sattva Capital Corp v Creston Moly Corp*, [2014 SCC 53](#)
10. *Stelco Inc. (Bankruptcy)*, *Re*, [2005 CanLII 8671 \(ON CA\)](#)
11. *Target Canada Co. (Re)*, [2016 ONSC 316](#)
12. *Walter Energy Canada Holdings, Inc. (Re)*, [2016 BCSC 107](#)
13. *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District*, [2021 SCC 7](#)

I certify that I am satisfied as to the authenticity of every authority, and I am satisfied that every quotation from an authority that appears in the factum accurately reproduces the text of the 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 (rule 4.06.1(2.2)).

Date October 2, 2026



Signature

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS & BY - LAWS

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

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

National Instrument 52-110 Audit Committees, s 1.4.

(1) An audit committee member is independent if he or she has no direct or indirect material relationship with the issuer.

(2) For the purposes of subsection (1), a "material relationship" is a relationship which could, in the view of the issuer's board of directors, be reasonably expected to interfere with the exercise of a member's independent judgement.

(3) Despite subsection (2), the following individuals are considered to have a material relationship with an issuer:

(...) (f) an individual who received, or whose immediate family member who is employed as an executive officer of the issuer received, more than \$75,000 in direct compensation from the issuer during any 12 month period within the last three years.

Court File No. CL-26-00000219-0000

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

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