

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

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

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

Applicants

**FACTUM OF THE AD HOC COMMITTEE OF SENIOR SECURED NOTEHOLDERS  
(DIP Financing)  
(Returnable June 10, 2026)**

June 9, 2026

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TO: **THE SERVICE LIST**

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**PART I - OVERVIEW: THE SENIOR SECURED LENDERS' DIP IS THE MOST APPROPRIATE DIP FACILITY AT THIS STAGE<sup>1</sup>**

1. The issue for the Court to decide now is which DIP should be approved until June 30: the Senior Secured Lenders' DIP for \$300 million<sup>2</sup>, funded by almost all of the existing secured creditors, or the Government DIP Facility for \$475 million, funded by a third party represented by a minority junior creditor, EDC. Both DIPs provide the \$110 million that the Debtors require during the Bridge Period at the same cost,<sup>3</sup> but only one maintains the status quo. On any application of section 11.2 of the CCAA, the Senior Secured Lenders' DIP should be approved because it meets the statutory requirements, provides the necessary liquidity and certainty to the Debtors and preserves the status quo until this Court can adjudicate the competing DIPs on a complete record.

DIP Terms	Senior Secured Lenders' DIP (\$300 million)	Government DIP Facility (\$475 million)
Viable DIP financing (confirmed by Monitor) <sup>4</sup>	✓	✓
Provides sufficient liquidity during the Bridge Period (\$110 million) on equivalent financial terms	✓	✓
Financing source comes entirely from existing secured creditors	✓	X
Minimizes disruptions to existing secured creditor priorities	✓	X
Supported by majority of existing secured creditors	✓	X
Does not insert any outside third party into position to make critical restructuring decisions on spending, budgets and restructuring strategy (incl. SISP) during Bridge Period	✓	X
Provides appropriate protections during Bridge Period to other secured creditors that may be primed by a DIP Charge	✓	X
Does not commit to potential overfunding of the Debtors	✓	X
Maintains status quo until June 30	✓	X

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

<sup>2</sup> All dollar amounts referenced herein are in United States Dollars unless otherwise specified.

<sup>3</sup> The Debtors, the Senior Secured Lenders, the Government and the Monitor have agreed that this Court will consider both DIPs on a complete record at a *de novo* hearing either on June 30 or in early July 2026. The parties agreed that up to \$110 million will be drawn under the DIP approved on June 10, 2026, to fund the Debtors through the date of such hearing.

<sup>4</sup> Second Report of the Monitor dated June 4, 2026 at para. 49 [*Second Report of the Monitor*].

2. This illustration highlights what the evidence establishes: both DIP facilities provide the same immediate liquidity at similar cost<sup>5</sup> for the Bridge Period, both are economically viable,<sup>6</sup> but only the Senior Secured Lenders' DIP (i) is financed entirely from within the existing capital structure, (ii) minimizes disruptions to existing secured creditor priorities, (iii) is supported by the overwhelming majority of secured creditors, (iv) does not hand control and leverage to any outside third party before the Court has a full record on the DIP issues, (v) does not potentially overfund, and, importantly, (vi) provides appropriate information, consultation and disclosure protections to other secured creditors during the Bridge Period.<sup>7</sup>

3. The governing principles on DIP financing are settled. Where existing senior creditors offer binding, executable DIP financing that meets the debtor's immediate liquidity needs and does not hinder restructuring efforts, that financing is the preferred source.<sup>8</sup> A competing priming DIP from an external party (or even a junior creditor) in those circumstances is a last resort—not a strategic preference.<sup>9</sup> The unequivocal evidence is that the Government is in fact funding the proposed Government DIP Facility.<sup>10</sup> The Government is not a pre-filing secured creditor of the Debtors. The Government is not even a signatory to the pre-filing EDC credit facility. As such, there is no basis for the Government to leapfrog the overwhelming majority of existing secured creditors here when those creditors have already done exactly what the law expects: they delivered a signed,

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<sup>5</sup> Affidavit of Joshua Gordon sworn June 9, 2026 at [Exhibit "C"](#) [*Gordon Affidavit (June 9)*]: Exhibit "C" is an email from counsel to the Ad Hoc Committee to the Monitor and its counsel, enclosing a costs analysis of the Senior Secured Lenders' DIP and the Government DIP Facility, prepared by Houlihan Lokey, financial advisor to the Ad Hoc Committee; see also Supplement to the Second Report of the Monitor dated June 9, 2026 at Appendix "D".

<sup>6</sup> Second Report of the Monitor at para. [49](#).

<sup>7</sup> The Senior Secured Lenders have agreed to provide the other junior secured creditor, Export Development Canada ("**EDC**") with certain information, consultation and disclosure rights during the Bridge Period, as set out in Schedule "C" hereto. The Government has made no such commitment to the Senior Secured Lenders in its DIP for the Bridge Period or otherwise.

<sup>8</sup> *Re Crystallex International Corporation*, [2012 ONSC 2125](#) at para. [91](#) [*Crystallex (ONSC)*]; *Inca One Gold Corp. (Re)*, [2024 BCSC 1478](#) at paras. [55-56](#), [60](#) & [64](#) [*Inca One Gold*].

<sup>9</sup> See for e.g., *Quest University Canada (Re)*, [2020 BCSC 318](#) at paras. [97-100](#) [*Quest University*]; *Inca One Gold* at paras. [55-56](#), [60](#) & [64](#); *In the matter of Canacol Energy Ltd. et al.* (December 11, 2025), King's Bench of Alberta (Action No. 2501-18462), [Decision of Mah, J.](#) at p. 7 [*Canacol (ABKB)*], upheld on appeal *Canacol Energy Ltd (Re)*, [2026 ABCA 57](#) at paras. [3-4](#) & [15](#) [*Canacol (ABCA)*].

<sup>10</sup> Transcript of Cross-Examination of Celeste van Tonder on June 8, 2026 at pp. [12:17-25](#), [13:8-10](#), [14:2-25](#), [16:2-25](#), [17:1-2](#).

actionable commitment in the exact amount requested, including for the Bridge Period, and the Monitor has confirmed that the Senior Secured Lenders' \$300 million DIP commitment is viable.<sup>11</sup> The fact that the Government has offered the Debtors a greater amount of committed financing than the Debtors requested (or may ultimately require) only enhances the potential prejudice of their financing<sup>12</sup> and, in any event, is irrelevant to the issue of which DIP financing should be selected to fund the Debtor during the Bridge Period.

4. Authorizing the Debtors to accept the Government DIP Facility for any period would be unprecedented in CCAA law. For the Bridge Period, this decision is even clearer. This Court should make an order which authorizes the Debtors to borrow under the DIP facility that is least disruptive to the existing capital structure and maintains the status quo.

5. An order which does the least to disrupt the existing priorities of all stakeholders must also be preferred when the Senior Secured Lenders were severely short-served with the Debtors' motion for DIP financing and, as a result, a litigation schedule has been set to allow the Senior Secured Lenders (and other parties in interest) to test the Debtors' evidence, present their own and fully brief and argue serious issues with the Government DIP Facility. In that regard, while this hearing requires the Court to determine which DIP facility should be approved, it is focused on the Bridge Period, given that the Court will hold a subsequent *de novo* hearing on a complete record.

6. The Senior Secured Lenders' DIP provides certainty to suppliers and stakeholders with a \$300 million commitment (the amount the Debtors requested) and does so with the least prejudice to the Debtors' capital structure during the Bridge Period. The Senior Secured Lenders' DIP should be approved.

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<sup>11</sup> Second Report of the Monitor at para. [49](#).

<sup>12</sup> *Tepper Holdings Inc., Re*, [2011 NBQB 211](#) at paras. [65-70](#) [*Tepper Holdings*].

## PART II - SUMMARY OF FACTS

### A. Background

7. On May 15, 2026, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an Order, among other things: (i) granting protections to Nunavut Iron Ore, Inc., Baffinland Iron Mines Corporation (“**BIM Corp**”), 12334992 Canada Inc. and Baffinland Iron Mines LP (together with BIM Corp, “**Baffinland**” and collectively, the “**Debtors**”); and (ii) appointing FTI Consulting Canada Inc. as Court-appointed monitor (in such capacity, the “**Monitor**”).<sup>13</sup>

8. The “**Senior Secured Lenders**” are comprised of: (i) Oaktree Capital Management, L.P. and Hartree Partners, LP (together, the “**First Secured Lenders**”); and (ii) an ad hoc committee (the “**Ad Hoc Committee**”) of the holders of \$575 million in principal amount of 8.750% senior secured notes issued by Baffinland (the “**Senior Secured Noteholders**” and such secured notes, the “**Senior Secured Notes**”). The Ad Hoc Committee is comprised of Senior Secured Noteholders representing over 70% of the Senior Secured Notes.<sup>14</sup>

9. Pursuant to an Intercreditor Agreement dated as of June 27, 2018 (the “**Intercreditor Agreement**”): (i) the First Secured Lenders hold first-ranking security over all of the Debtors’ assets; and (ii) the Senior Secured Noteholders and EDC hold *pari passu* security over the Shared Collateral (as defined in the Intercreditor Agreement).<sup>15</sup>

### B. The DIP Solicitation Process & DIP Motion

10. Also on May 15, 2026, the Monitor commenced a debtor in possession (“**DIP**”) solicitation process, to identify DIP financing for the Debtors during the CCAA proceedings (the “**DIP Solicitation Process**”). The deadline for parties to submit proposals in the DIP Solicitation

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<sup>13</sup> Affidavit of Celeste van Tonder sworn June 3, 2026 at para. [15](#) [*van Tonder Affidavit (June 3)*].

<sup>14</sup> Affidavit of Joshua Gordon sworn June 4, 2026 at para. [1](#) [*Gordon Affidavit (June 4)*].

<sup>15</sup> Affidavit of Celeste van Tonder sworn May 14, 2026 at para. [109](#).

Process was initially set for May 20, 2026 and was subsequently extended to May 25, 2026 (as extended, the “**DIP Solicitation Deadline**”).<sup>16</sup>

11. A hearing for approval of the DIP selected in the DIP Solicitation Process (the “**DIP Approval Hearing**”) was initially scheduled for May 25, 2026. In the Motion Record of the Debtors dated May 20, 2026, the Debtors advised that the DIP Approval Hearing was being adjourned to June 3, 2026 to allow additional time for the DIP Solicitation Process. On June 1, 2026, at 9:46 p.m., the Monitor advised that the DIP Approval Hearing was further adjourned to June 5, 2026.<sup>17</sup>

12. The Senior Secured Lenders delivered a binding and actionable signed joint commitment on the DIP Solicitation Deadline (the “**Senior Secured Lenders’ Initial DIP**”).<sup>18</sup>

13. On May 27, 2026, the Monitor, on behalf of the Debtors, provided the Senior Secured Lenders with an issues list with respect to the Senior Secured Lenders’ Initial DIP (the “**Issues List**”) and requested responses to the Issues List that same day.<sup>19</sup>

14. On May 27, 2026, the Senior Secured Lenders: (i) responded to the Debtors’ comments on the Senior Secured Lenders’ Initial DIP; and (ii) requested additional clarification on certain of the Debtors’ comments.<sup>20</sup>

15. On May 28, 2026, the Debtors provided the Senior Secured Lenders with a markup of the Senior Secured Lenders’ Initial DIP and requested that the Senior Secured Lenders return their “best and final terms” by no later than May 30, 2026.<sup>21</sup> The Debtors did not address the Senior Secured Lenders’ prior requests for clarification on the Debtors’ comments in the Issues List.

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<sup>16</sup> Gordon Affidavit (June 4) at paras. [4-5](#).

<sup>17</sup> Gordon Affidavit (June 4) at para. [11](#).

<sup>18</sup> Gordon Affidavit (June 4) at para. [6](#).

<sup>19</sup> Gordon Affidavit (June 4) at para. [7](#).

<sup>20</sup> Gordon Affidavit (June 4) at para. [8](#) & [Exhibit “G”](#).

<sup>21</sup> Gordon Affidavit (June 4) at para. [9](#).

16. In response to the Issues List and the Debtors' markup of the Senior Secured Lenders' Initial DIP, the Senior Secured Lenders revised their initial commitment and, on May 30, 2026, submitted a revised binding and actionable signed joint commitment to provide DIP financing (the "**Senior Secured Lenders' DIP**") in the exact amount the Debtors requested: \$300 million, with initial advances of up to \$110 million over the first four weeks with an immediate initial advance of \$70 million available immediately (the \$110 million being the "**Senior Secured Lenders' Bridge Commitment**").<sup>22</sup> This \$300 million DIP is the DIP that the Senior Secured Lenders are asking the Court to approve to be used to fund the Debtors during the Bridge Period.

17. The Senior Secured Lenders' DIP was prepared in consideration of, among other things, the Debtors' requested amount of \$300 million for financing, including \$110 million for the four-week period ending July 3, 2026 (such period, the "**Bridge Period**").<sup>23</sup> The Senior Secured Lenders' DIP provides those amounts and, if the advances made under the Senior Secured Lenders' Bridge Commitment are repaid from a replacement DIP facility, no commitment/funding fee is payable. During the Bridge Period, only interest and reasonable out-of-pocket legal expenses of the Senior Secured Lenders, in their capacity as DIP lender, are payable.<sup>24</sup>

18. On June 4, 2026, at 12:10 a.m., the Debtors served motion materials in connection with a motion returnable on June 5, 2026 (the "**DIP Motion**"), seeking a Second Amended and Restated Initial Order: (i) approving a DIP facility to be funded entirely by His Majesty in Right of Canada (the "**Government**"), as represented by EDC (the "**Government DIP Facility**"), for an available principal amount of \$475 million, including up to \$110 million available for the Bridge Period; and (ii) granting a charge in favour of the Government, securing the Debtors' obligations under the Government DIP Facility.<sup>25</sup>

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<sup>22</sup> Gordon Affidavit (June 4) at para. [10](#) & [Exhibit "I"](#).

<sup>23</sup> Second Report of the Monitor at [Appendix "C"](#); Gordon Affidavit (June 4) at [Exhibit "I"](#).

<sup>24</sup> Gordon Affidavit (June 4) at [Exhibit "I"](#).

<sup>25</sup> van Tonder Affidavit (June 3) at para. [4](#).

19. Alarming, the Debtors appear to either have been playing a game of bait and switch with the Senior Secured Lenders, or they don't understand their own cash flow requirements. In either circumstance, the Debtors' evidence as to its future requirements is wholly unreliable.

20. Based on that unreliable record, the Debtors' ask this Court to treat facility size as an advantage of the Government DIP Facility.<sup>26</sup> Concomitantly, the Debtors unfairly point to certain alleged restrictions in the Senior Secured Lenders' DIP as being factors which contributed to the Debtors' decision not to select the Senior Secured Lenders' DIP.<sup>27</sup> Those same alleged restrictions were those which the Senior Secured Lenders' sought, and failed to receive specifics, from the Debtors.<sup>28</sup>

21. Similar to the hypocritical reliance on the DIP size, the Debtors now self-servingly rely on allegedly burdensome terms they failed to identify or negotiate. Notably, none of these alleged restrictions could have any material effect over a three-week Bridge Period.

22. Also on June 4, 2026, the Senior Secured Lenders filed a cross-motion for, among other things, authorization for the Debtors to borrow under the Senior Secured Lenders' DIP for any interim financing required during the Bridge Period (the "**Cross-Motion**").

23. On June 5, 2026, the Debtors and the Monitor reached an agreement with the Senior Secured Lenders to, among other things: (i) adjourn the relief sought on the DIP Motion and the Cross-Motion to June 10, 2026, at which time the Court would be asked to determine the appropriate facility to provide interim bridge financing; and (ii) agree upon a litigation schedule for a hearing on the DIP financing issues on a complete record on a *de novo* basis.

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<sup>26</sup> van Tonder Affidavit (June 3) at paras. [81-82](#).

<sup>27</sup> van Tonder Affidavit (June 3) at paras. [50](#), [76](#) & [84](#).

<sup>28</sup> Gordon Affidavit (June 4) at [Exhibits "G" and "I"](#).

24. This Court issued an endorsement, setting a motion on June 10, 2026 to address “much needed interim bridge financing.”<sup>29</sup> As such, the total facility amount provided for under the Government DIP Facility is not a primary consideration on June 10. At the end of June, or early July, the Court will address, on a complete record, the appropriate DIP facility to approve. This decision will include whether, under Section 11.2 of the CCAA, the Court has authority to approve a DIP facility which, by the Debtors’ own evidence, may exceed the Debtors’ own cash flow requirements:

...A larger facility provides a critical **cushion**...the additional capacity serves as a **buffer** for the Debtors’ ongoing operations...[**emphasis added**].<sup>30</sup>

25. On June 7, 2026, the Debtors served a further affidavit sworn by Celeste van Tonder, obviously intended to address, after-the-fact, the serious concerns with issues raised by the Senior Secured Lenders.<sup>31</sup> All Ms. van Tonder does is add uncorroborated speculation about the potential spending needs of the Debtors more than a year from now and the benefits of the larger Government DIP Facility in 2027. Importantly, it adds nothing relevant to the issue of which DIP is most appropriate to fund the Bridge Period. As confirmed by the Monitor, what is needed in 2027 will depend on what happens in 2026:

The 2027 forecast is based on 2026 and there is no incremental spend in the first half of 2027. **The cash spend in 2027 will depend on the outcome of 2026**, but it is expected that the sea lift expenditures will be consistent with what is reflected in the cash flows. [**emphasis added**]<sup>32</sup>

26. On June 9, 2026, the Senior Secured Lenders provided the Debtors with a revised version of the Senior Secured Lenders’ DIP that responds to the Debtors’ unspecified concerns regarding

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<sup>29</sup> *In the Matter of Nunavut Iron Ore Inc. et al.* (June 5, 2026), ONSC (Commercial List), Court File No. CL-26-00000219-0000, [Endorsement of Steele, J.](#) at para. 5.

<sup>30</sup> van Tonder Affidavit (June 3) at paras. [81-82](#).

<sup>31</sup> Affidavit of Celeste van Tonder sworn June 7, 2026.

<sup>32</sup> Gordon Affidavit (June 9) at [Exhibit “B”](#).

certain default triggers.<sup>33</sup> Further, the Senior Secured Lenders revised the Bridge Commitment to provide for the funding required in the Bridge Period by way of a single advance.

27. Also on June 9, 2026, in an effort to address any potential prejudice to EDC, as a junior secured creditor, from the approval of the Senior Secured Lenders' DIP, the Senior Secured Lenders' provided the Debtors and the Monitor with a list of key information, consultation and disclosure rights (the "**Secured Creditor Protections**") which they commit will be provided to EDC during the Bridge Period.<sup>34</sup> The Secured Creditor Protections are set out at **Schedule "C"** below.

### **PART III - THE ISSUE TO BE DETERMINED**

28. The issue for this Court to address on June 10 is which DIP financing should be approved now to provide financing to the Debtors during the Bridge Period: (a) the Senior Secured Lenders' DIP or (b) the Government DIP Facility.

### **PART IV - LAW & ARGUMENT**

#### **A. CCAA Courts Prefer Viable DIP Financing From Existing Senior Secured Creditors**

29. The onus is on the Debtors to establish that the proposed Government DIP Facility should be approved now to fund the Bridge Period, despite the serious prejudice it creates and the fact that it does not preserve the status quo.<sup>35</sup>

30. In dealing with competing DIP financing proposals, courts examine whether the proposal will best serve the interests of the Debtors' stakeholders as a whole by enhancing the prospects

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<sup>33</sup> For example, the Senior Secured Lenders removed various customary events of default and covenants contained in the Senior Secured Lenders' DIP submitted on May 30, 2026.

<sup>34</sup> Gordon Affidavit (June 9) at [Exhibit "D"](#).

<sup>35</sup> *Tacora Resources Inc. (Re)*, [2023 ONSC 6126](#) at para. 44 [*Tacora (2023)*]: dealing with a cross-motion brought by secured lenders opposing the approval of proposed interim financing, the Court noted the cross-motion "requires the court to consider more broadly whether the applicant has satisfied its onus to demonstrate to the court that it is appropriate to approve the [DIP Facility and related charge], having regard to s. 11.2 of the CCAA"; see also *Simpson's Island Salmon Ltd. (Re)*, [2006 NBQB 6](#) at para. 16 [*Simpson's Island Salmon*], where the court acknowledged that there must be "cogent evidence" provided by the applicants to justify the relief sought.

of a successful restructuring.<sup>36</sup> This analysis takes into account practical factors, such as the certainty and stability of funding and the debtor company's immediate liquidity needs.<sup>37</sup>

31. Where a proposed DIP financing is opposed by a secured creditor, there must be “cogent evidence” that the benefits of the opposed financing outweigh the prejudice to the existing secured creditors whose security is being subordinated and “the Court should be cautious in exercising its inherent jurisdiction to order priority for a DIP Charge over the objection of a secured creditor.”<sup>38</sup> This principle is grounded in the text of Section 11.2(4) of the CCAA, which directs the court to consider whether any creditor would be materially prejudiced as a result of the security or charge.<sup>39</sup> The assessment of “material prejudice” requires consideration of the extent to which existing creditors are being subordinated by a DIP charge.<sup>40</sup>

32. Courts have expressed a clear preference for financing from within the existing capital structure so long as it will further the restructuring.<sup>41</sup> Non-consensual priming DIP financing from an external party should be a measure of last resort — appropriate only where the senior secured lenders have failed to come forward with a binding offer or have failed to offer realistic terms.<sup>42</sup>

33. The caselaw is entirely consistent with these principles and the Debtors have not been able to point to any case where the Court has chosen DIP financing from a subordinate creditor or third party over a viable DIP proposal from senior secured lenders. The cases cited by the

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<sup>36</sup> *Tacora Resources Inc., Re*, [2024 ONSC 2454](#) at para. [30](#) [*Tacora (2024)*]; citing *Great Basin Gold Ltd. (Re)*, [2012 BCSC 1459](#) at para. [15](#) [*Great Basin Gold*].

<sup>37</sup> *Tacora (2024)* at para. [12](#).

<sup>38</sup> *Great Basin Gold* at para. [194](#); *AbitibiBowater Inc., Re*, [2009 QCCS 6453](#) at para. [16](#) [*AbitibiBowater*]; *Simpson's Island Salmon* at para. [16](#); *Temple City Housing Inc., Re*, [2007 ABQB 786](#) at para. [14](#) [*Temple City Housing*].

<sup>39</sup> *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 s. [11.2\(4\)](#) [CCAA]. Section 11.2(4) of the CCAA directs the court to consider, among other things, whether management has the confidence of its major creditors, whether the proposed financing enhances the prospects of a viable restructuring, whether any creditor would be materially prejudiced by the requested charge, and the position of the Monitor.

<sup>40</sup> *Tacora (2023)* at para. [108](#).

<sup>41</sup> *Crystallex (ONSC)* at para. [91](#); *Inca One Gold* at paras. [55-56](#), [60](#) & [64](#) (noting that the secured creditor's proposal had “the real prospect of lessening Inca One's chance to achieve a successful restructuring”).

<sup>42</sup> See for e.g., *Quest University* at paras. [97-100](#); *Inca One Gold* at paras. [55-56](#), [60](#) & [64](#); *Canacol (ABKB)* at p. 7, upheld on appeal *Canacol (ABCA)* at paras. [3-4](#) & [15](#).

Debtors where the DIP financing approved had the effect of priming and subordinating secured or senior creditors arose where (a) the secured creditor(s) did not submit a DIP proposal; or (b) where the secured or senior creditors failed to provide a workable proposal.<sup>43</sup> Neither are the case here, where the Senior Secured Lenders have submitted fully committed DIP financing in the exact amount requested by the Debtors, which the Monitor has confirmed is viable.<sup>44</sup>

### **B. The Senior Secured Lenders' DIP Preserves the Status Quo**

34. The substantive dispute over which DIP facility should be finally approved will be decided on a complete record. In the interim, the Debtors require financing to bridge that period and provide future certainty to their stakeholders. Any such interim financing must not only further the restructuring but minimize prejudice to existing secured creditors and maintain the status quo.

35. The Senior Secured Lenders' Bridge Commitment does exactly that. It (i) provides the financing required to fund and maintain the Debtors' operations and provide certainty to suppliers, (ii) contains a commercially reasonable interest rate and is marginally cheaper than the Government DIP Facility, and (iii) provides for a waiver of any commitment/funding fee if the Senior Secured Lenders' DIP is repaid from a replacement DIP facility.<sup>45</sup> The Senior Secured Lenders have worked in good faith and there is no suggestion that they have any ulterior motivation in proposing their DIP financing; they are seeking to preserve their collateral. Further, the Senior Secured Lenders have committed to provide EDC, as junior secured creditor, with protective information, consultation and disclosure rights during the Bridge Period pending final resolution of the selection of DIP financing, being the Secured Creditor Protections.<sup>46</sup> This serves EDC's interest as the minority secured creditor and maintains the status quo.

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<sup>43</sup> *Tacora (2023)* at para. [91](#) (lender proposal not capable of execution); *QM GP Inc. v High Point Environmental Services Inc.*, [2025 ONSC 4492](#) at para. [47](#) (no lender proposal); *Re 1057863 BC Ltd.*, [2020 BCSC 1359](#) at paras. [46](#) & [65](#) (no other viable alternatives; "As best I can tell, [the secured creditor] seems to be ready to test PEC's resolve to determine if PEC will, as the shareholder, fund the ongoing costs itself without any interim financing and related charge").

<sup>44</sup> Second Report of the Monitor at para. [49](#).

<sup>45</sup> Gordon Affidavit (June 4) at [Exhibit "I"](#).

<sup>46</sup> Gordon Affidavit (June 9) at [Exhibit "D"](#).

36. While the Senior Secured Lenders delivered a market proposal with reps and warranties that were functionally equivalent to the Government DIP Facility, following the June 5 hearing, the Senior Secured Lenders have further revised their documentation to more closely match the Government DIP Facility. Notwithstanding the time pressures and questionable DIP Solicitation Process, the Senior Secured Lenders have met the Debtors requests at each turn.

37. The June 9<sup>th</sup> revised Senior Secured Lenders' DIP was prompted by the Debtors failure to engage with the Senior Secured Lenders in the DIP Solicitation Process and then insist that certain non-financial terms of the Government DIP Facility were preferable. Regardless of the flawed DIP Solicitation Process, the Court has, in any event, full jurisdiction to accept an offer of this nature and timing where it comes from the senior secured stakeholders:<sup>47</sup>

Had the noteholders been prepared to lend now on the basis of the terms of the Tenor DIP facility, that would have been a preferable outcome, **even if it was not made within the terms of the bid process** approved by the Monitor, as it would not have involved the insertion of any third party into the process. Unfortunately, it was made clear during argument that the noteholders were not prepared at this time to do so. [...] **[emphasis added]**

38. By contrast, the Government DIP Facility is not a status quo preserving measure. Once installed, the Government gains practical benefits that matter most in a restructuring: priming priority, superior access to information, control over budgets and spending, and immediate control over how the restructuring unfolds. Notably, the Government DIP Facility does not offer similar protective information, consultation and disclosure rights to the Senior Secured Lenders. The timing of the Government's introduction to these proceedings must not be overlooked: an external party will be inserted into a position of control and influence before this Court even has a complete record on the DIP motion scheduled to be heard on June 30. The Government DIP Facility should not be approved to provide financing during the Bridge Period.

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<sup>47</sup> *Crystallex (ONSC)* at para. [91](#).

39. Courts have repeatedly cautioned against approving DIP financing that “inappropriately advantage[s] one party over another to the detriment of that party and the stakeholders generally.”<sup>48</sup> The importance of that caution is heightened where the proposed financing is being opposed by a secured creditor<sup>49</sup> and there are viable alternative DIP financing proposals offered from secured creditors.<sup>50</sup>

40. The Government DIP Facility, even in the short term, will secure an advantage for the Government, at the expense and over the objection of the Senior Secured Lenders, in the face of an alternative viable binding commitment that comes entirely from within the preexisting capital structure. This prejudice will result irrespective of whether the Government DIP Facility is repaid after the Bridge Period; regardless, the Senior Secured Lenders will have been primed by the amounts advanced under the Government DIP Facility, without their consent and before there is evidence regarding the potential damage to their security.

41. The Debtors assert that the prejudice to be suffered by the priming caused by the Government DIP Facility is “inherent in any DIP arrangement.”<sup>51</sup> That is not the consideration at all. The Government of Canada, whose participation is required to fund and assume the risk under the Government DIP Facility, is a third party to these proceedings. Approval of the Government DIP Facility would elevate a third party (non-creditor) ahead of the parties holding the overwhelming majority of the Debtors’ secured debt; namely, the Senior Secured Lenders. That is a far cry from and substantially more prejudicial than the Senior Secured Lenders advancing DIP funding ahead of their own existing debt in aid of the Debtors’ restructuring and the preservation of their collateral.

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<sup>48</sup> *Fire & Flower Holdings Corp., Re*, [2023 ONSC 4048](#) at para. [40](#); citing *Great Basin Gold Ltd* at para. [179](#).

<sup>49</sup> *Great Basin Gold* at para. [194](#); *AbitibiBowater* at para. [16](#); *Simpson’s Island Salmon* at para. [16](#); *Temple City Housing* at para. [14](#).

<sup>50</sup> *Crystallex (ONSC)* at para. [91](#).

<sup>51</sup> Factum of the Debtors dated June 4, 2026 at para. [49](#).

42. The Senior Secured Lenders' DIP is the only option before the Court that preserves the status quo to June 30, while also ensuring that EDC, as a junior secured lender, has access to information, consultation and disclosure rights in these proceedings.

**C. There are Serious Issues with the Government DIP Facility to be Addressed at the Final DIP Hearing**

43. From the first day of these CCAA proceedings, the Senior Secured Lenders have raised concerns about a lack of transparency and engagement with the Debtors' most significant creditors.<sup>52</sup> What results is a financing facility that ultimately cannot be determined to be necessary to the restructuring or in the best interests of the company and its creditors. The arguments to be addressed at the final DIP hearing include, among other things:

- (a) the Government DIP Facility being in excess of the amounts the Debtors' require to complete a restructuring. Section 11.2(1) clearly limits the amount that can be approved by this Court to the amount that is "*required*", not "*preferred*",<sup>53</sup>
- (b) the development of the Government DIP Facility, and the fact that other bidders were guided to a lower amount in their proposals, which gives rise to questions about whether the Debtors either intended to influence the outcome of the DIP Solicitation Process or fail to understand their own cash flow requirements. The Debtors admit that they did not engage with the Ad Hoc Committee prior to the commencement of the CCAA.<sup>54</sup> As noted above, the Debtors' pattern of non-engagement with the Ad Hoc Committee continued post-filing, with the refusal to

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<sup>52</sup> Gordon Affidavit (June 4) at [Exhibit "B"](#).

<sup>53</sup> CCAA s. [11.2\(1\)](#); see *Industrial Properties Regina Limited v Copper Sands Land Corp.*, [2018 SKCA 36](#) at paras. [46-48](#); *Tepper Holdings* at paras. [65-70](#).

<sup>54</sup> van Tonder Affidavit (June 3) at para [52](#).

answer questions or provide feedback, while apparently continuing to negotiate with the Government after “final bids” were due;<sup>55</sup> and

- (c) the Debtors have put forward no evidence of valuation that would suggest that the Senior Secured Lenders will not be prejudiced if primed by the Government DIP Facility. The Debtors rely on the balance sheet as of December 31, 2025, but provide no evidence about whether that reflects the marketable or realizable value of the Debtors’ business, or the recoverable value in an insolvency, much less the impact of adding nearly half a billion dollars to the liabilities. The Monitor’s Second Report notes only that “[t]he market value of the Debtors’ property will be finally determined through the SISP.”<sup>56</sup> The Monitor has also confirmed that it currently has no valuation evidence.<sup>57</sup>

44. There is no need to approve or indirectly sanction anything related to the Government DIP Facility on June 10. The Debtors should be authorized to borrow under the Senior Secured Lenders’ DIP for the Bridge Period until the parties have an opportunity to present further evidence and argument at the final DIP hearing.

45. Ultimately, the Debtors’ unbridled advocacy for the Government DIP Facility seems to be based on no more than, they like it better. This motion is not, however, a referendum on which lender the Debtors would prefer to work with. Once that is recognized, the bridge issue becomes simple. The Senior Secured Lenders have already offered executable financing that supplies the required bridge liquidity on viable terms. In the circumstances, the Debtors cannot justify priming merely because they prefer the optics, flexibility, or strategic leverage of the Government DIP Facility. Section 11.2 of the CCAA does not authorize priming for convenience. It authorizes

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<sup>55</sup> van Tonder Affidavit (June 3) at para. [70](#) & [Exhibit “F”](#).

<sup>56</sup> Second Report of the Monitor at para. [76](#).

<sup>57</sup> Gordon Affidavit (June 9) at [Exhibit “B”](#).

interim financing that is required and appropriate. The Senior Secured Lenders' DIP meets that test.

**PART V - ORDER REQUESTED: APPROVE THE SENIOR SECURED LENDERS' DIP TO FUND THE BRIDGE PERIOD**

46. The Ad Hoc Committee respectfully requests that the Court enter a Third Amended and Restated Initial Order:

- (a) authorizing the Debtors' to enter into the Senior Secured Lenders' DIP and borrow the amounts required during the Bridge Period; and
- (b) granting a charge in favour of the Senior Secured Lenders, securing the Debtors' obligations during the Bridge Period under the Senior Secured Lenders' DIP.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 9<sup>th</sup> day of June, 2026.

*Cassels Brock & Blackwell LLP*

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*Lawyers for the Ad Hoc Committee of Senior  
Secured Noteholders*

## SCHEDULE "A"

### LIST OF AUTHORITIES

1. *AbitibiBowater Inc., Re*, [2009 QCCS 6453](#)
2. *Canacol Energy Ltd (Re)*, [2026 ABCA 57](#)
3. *Fire & Flower Holdings Corp., Re*, [2023 ONSC 4048](#)
4. *Great Basin Gold Ltd. (Re)*, [2012 BCSC 1459](#)
5. *In the matter of Canacol Energy Ltd. et al.* (December 11, 2025), King's Bench of Alberta (Action No. 2501-18462), [Decision of Mah, J.](#)
6. *In the Matter of Nunavut Iron Ore Inc. et al.* (June 5, 2026), ONSC (Commercial List), Court File No. CL-26-00000219-0000, [Endorsement of Steele, J.](#)
7. *Inca One Gold Corp. (Re)*, [2024 BCSC 1478](#)
8. *Industrial Properties Regina Limited v Copper Sands Land Corp.*, [2018 SKCA 36](#)
9. *QM GP Inc. v High Point Environmental Services Inc.*, [2025 ONSC 4492](#)
10. *Quest University Canada (Re)*, [2020 BCSC 318](#)
11. *Re Crystallex International Corporation*, [2012 ONSC 2125](#)
12. *Simpson's Island Salmon Ltd. (Re)*, [2006 NBQB 6](#)
13. *Tacora Resources Inc. (Re)*, [2023 ONSC 6126](#)
14. *Tacora Resources Inc., Re*, [2024 ONSC 2454](#)
15. *Temple City Housing Inc., Re*, [2007 ABQB 786](#)
16. *Tepper Holdings Inc., Re*, [2011 NBQB 211](#)
17. *Re 1057863 BC Ltd.*, [2020 BCSC 1359](#)

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

Date June 9, 2026



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Signature

## SCHEDULE "B"

### TEXT OF STATUTES, REGULATIONS & BY - LAWS

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

##### **Interim financing**

**11.2 (1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

##### **Priority — secured creditors**

**(2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

##### **Priority — other orders**

**(3)** The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

##### **Factors to be considered**

**(4)** In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

[...]

## SCHEDULE "C"

### Secured Creditor Protections

The following sets out protections that the Senior Secured Lenders (the "**SSL**") are willing to provide to Export Development Canada in its capacity as pre-filing secured creditor ("**EDC**") for the period from June 10, 2026 through June 30, 2026 (the "**Bridge Period**"), should the SSL DIP facility ("**SSL DIP**") be approved by the CCAA court.

#### (a) Consent Rights

The following matters shall require the prior written consent of EDC:

1. **Appointment of Chief Restructuring Officer or Expansion of Monitor Powers.** The appointment of any chief restructuring officer or any expansion of the powers of the Monitor beyond those set out in the Initial Order.
2. **DIP Facility Draws Above Interim Bridge Amount.** Any draws on the SSL DIP in excess of \$110 million.
3. **Waivers of DIP Facility Limits.** Any waivers of imposed limits under the SSL DIP in respect of the Steensby Expansion project or mineral exploration expenses.

#### (b) No Exclusivity

4. The SSL confirm that the SSL DIP does not include any provisions limiting the ability of the Debtors to solicit or accept alternative proposals for final or interim financing.

#### (c) Consultation Rights

The Company, the Monitor, and their respective advisors shall consult with EDC in respect of the following matters:

5. **Investment Banker Selection for Sales and Investment Solicitation Process (the "SISP").** The Company shall consult with EDC on investment banker candidates to conduct the SISP prior to interviewing any such candidates, shall permit EDC to attend interviews with candidates and provide feedback, and shall consult with EDC on the engagement terms of the selected investment banker prior to finalisation.
6. **Development of the SISP.** The Company shall consult with EDC on the development of the SISP, and appropriate consultation and information rights for EDC shall be incorporated into the SISP procedures, subject to confidentiality.
7. **Budgets and Cash Flow Forecasts.** The Company and the Monitor shall consult with EDC on any proposed budgets and cash flow forecasts (and any amendments thereto) prior to the finalisation or Court approval of any such budgets or forecasts.
8. **Specified Capital Expenditures and Commitments.** The Company and the Monitor shall consult with EDC prior to: (i) any discretionary capital expenditures toward the Steensby Expansion project or non-discretionary capital expenditures toward the Steensby Expansion project above \$20 million; (ii) any discretionary exploration expenditures or non-discretionary exploration expenditures above \$10 million; (iii) any payments to related parties or insiders; or (iv) any binding sealift procurement commitments related to the Steensby Expansion, or otherwise outside of normal course operations.

**(d) Information Rights**

EDC shall be entitled to the following information and reporting rights throughout the Bridge Period:

9. **Information Equivalent to DIP Lenders.** EDC shall receive the same level of written information and financial reporting received by the SSL as DIP Lender, including variance reporting.
10. **Regular Update Calls.** Management and Company advisors shall host regular weekly update calls with EDC addressing the business, the restructuring proceedings, and the SISP (once implemented).
11. **Payment of Advisor Fees.** The reasonable fees and disbursements of EDC's professional advisors shall be paid by the Company and included as a line item in the approved cash flow forecast.

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

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

Court File No. CL-26-00000219-0000

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

PROCEEDING COMMENCED AT  
TORONTO

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

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