ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CL-26-00000219-0000 **DATE: October 29, 2026**

NO. ON LIST: 3

TITLE OF PROCEEDING: IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-38, AS AMENDED

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

BEFORE: JUSTICE Jana Steele

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE STEELE:

[1] There are two motions:

(a) The Applicants' motion for approval of a key employee retention plan (the "KERP"), a court ordered charge over the Debtors' property as security for payments under the KERP, and a sealing order; and

(b) The Monitor's motion for an order authorizing the CRO to execute the Participation Agreement among the Debtors, the QIA and NTI, approving Reports and professional fees, and sealing the Participation Agreement.

[2] Capitalized terms used in this endorsement that are not defined herein have the meaning set out in the Applicants' factum or the Monitor's factum.

[3] No one opposes the relief sought.

Applicant's Motion

Should the Court approve the KERP and KERP Charge?

[4] The Applicants, in consultation with the Monitor and the CRO, have developed the proposed KERP to maintain operational stability and minimize disruptions to the business during the CCAA Proceedings. The KERP is limited to 36 employees, and payments are scaled by seniority and role. The KERP combines a time-based payment with event-based payments tied to the close of a restructuring transaction. The Applicants maintain that the KERP Recipients are essential to the continued operation of the business and will be needed to assist in the SISP and the successful completion of a transaction thereunder.

[5] This Court's jurisdiction to approve the KERP is grounded in the Court's general power under s. 11 of the CCAA to make any order it sees fit in a CCAA proceeding.[1] Courts have frequently exercised their discretion to approve KERPs where the retention of certain key employees has been deemed critical to a successful restructuring.

[6] As set out in *Just Energy Group Inc. et al.*, 2021 ONSC 7630, at para. 7, the factors the court may consider in determining whether to approve a KERP (and KERP Charge[2]) include:

(a) Approval of the Monitor;

(b) Whether the beneficiaries of the KERP are likely to consider other employment opportunities if the KERP is not approved;

(c) Whether the beneficiaries of the KERP are crucial to the successful restructuring of the debtor company;

(d) Whether a replacement could be found in a timely manner should the beneficiary elect to terminate his or her employment with the debtor company; and

(e) The business judgment of the board of directors of the debtor.

[7] The Court in *HBC* stated that three criteria underlie the above factors, at para. 89: (a) arm's length safeguards; (b) necessity; and (c) reasonableness of design.

[8] For the reasons set out at para. 24 of the Applicants' factum I am satisfied that the KERP is necessary, appropriate and should be approved. Among other things, the KERP was designed by the CRO, an independent restructuring professional, and is supported by the Monitor, the DIP Lender and the Senior Secured Lenders. The KERP was designed to incentivize key

[1] Section 11 of the CCAA provides: "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."
[2] *Hudson's Bay Company, Re*, 2025 ONSC 1897, at paras. 88 and 95.

employees with specialized technical and institutional knowledge of the Debtors' remote northern mining operations and contracts to continue to operate the Mine and support the SISP. Without the KERP, there is a real risk the KERP Recipients would pursue other opportunities to the detriment of all stakeholders. The Debtors, through the CRO and with input from the Monitor, determined the quantum of the proposed retention bonuses and are of the view that they are reasonable in the circumstances of these proceedings, including the remote location of the Mine.

[9] An essential component of the KERP is the Applicants' ability to pay the KERP Recipients their retention payments in accordance with the terms of the KERP. Accordingly, the Applicants also seek approval of the KERP Charge over the Debtors' property up to the maximum amount of CAD $17,096,250. This request is reasonable and appropriate in the circumstances and should be approved for the reasons set out at para. 27 of the Applicants' factum.

Should the Court approve the sealing order over the summary of the KERP?

[10] The Applicants seek to seal Confidential Exhibit "B" which contains each KERP Recipient's name, current position and compensation entitlements under the KERP (the "KERP Summary"). The KERP Summary contains identifiable individual information and compensation information for each KERP Recipient that if made public may cause harm to the employees and disruption to the Company. The employees have not consented to the disclosure of this private information. This Court has granted similar sealing orders in the past see: *Xiwang Iovate Holdings Company Limited et al*, 2026 ONSC 676 and *Just Energy Group Inc. et al.*, 2021 ONSC 7630, at paras. 26-29.

[11] To grant this relief, the court must be satisfied of the test in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522, at para. 53, as modified by *Sherman Estate v. Donovan*, 2021 SCC 25, 72 C.R. (7th) 223, at paras. 38 and 43, having regard to:

(a) The important public interest in the openness of courts and whether it poses a serious risk to some other important public interest;

(b) Whether the order sought is necessary to prevent the risk to the other identified public interest because alternative measures are not available; and

(c) As a matter of proportionality, the benefits of the sealing order outweigh its negative effects.

[12] All three factors delineated in the *Sherman Estate v. Donovan*, 2021 SCC 25, at para 38, are satisfied here.

(d) As in *Just Energy*, the documents the applicants seek to seal contain the names of the KERP Recipients and the amounts each will receive. Publicly disclosing employee compensation violates the privacy interest of those employees. The employees themselves have not initiated any court proceeding that would require production of that information and have not consented to its release. Broad publication of confidential income data could create risks for employee retention in this and other CCAA proceedings. This is an important public interest.

(e) There is no reasonable alternative to granting the sealing relief requested. If such relief is not granted, it would lead to the disclosure of personally sensitive information for which the KERP Recipients have a reasonable expectation of privacy.

(f) The benefits of the sealing request outlined above outweigh any deleterious effects. The information contained in the KERP Summary is limited to the amounts that each employee is to receive in accordance with the KERP (including the salary and bonus information of each such person and calculations based on same). Furthermore, there are no deleterious effects - the aggregate amount to be paid to the KERP Recipients has been disclosed, allowing stakeholders to assess the aggregate impact the KERP would have on the Applicants' financial position. There is no benefit to the stakeholders of the Applicants of having the KERP Summary made public when the disclosure of the summary would harm the employees benefiting under the KERP and breach their privacy interests.

Monitor's Motion

Should the Court authorize the CRO to execute the Participation Agreement?

[13] The Monitor seeks an order authorizing the CRO to enter into and execute, in the name of and on behalf of the Debtors, the Participation Agreement, which provides for certain participation and information rights of the QIA and NIT during the SISP, and the payment of certain advisor fees.

[14] The negotiations for the Participation Agreement with QIA and NTI were conducted by the CRO on behalf of the Debtors. The Participation Agreement is ready for execution. The Monitor states that the Operating Committee is of the view that the CRO, as the primary negotiator on behalf of the Debtors', is better positioned to approve and enter into the Participation Agreement on the Debtors' behalf. (Counsel for the three EMG members on the Operating Committee, who do not take a position on the motion, indicated their view that they were not fully informed of the discussions.)

[15] The Monitor seeks this relief under the Court's broad jurisdiction under s. 11 of the *CCAA*. As noted by the Supreme Court of Canada in *9354-9186 Québec inc. v. Callidus*

Capital Corp., 2020 SCC 10, at para. 49, the Court has broad discretion under s. 11 of the *CCAA*, but it is not "boundless." Further, the Supreme Court cautioned that the discretionary authority "must be exercised in furtherance of the remedial objectives of the *CCAA*." The Monitor submits that the relief sought is appropriate in light of the *CCAA*'s policy objectives. I agree.

[16] The Court in *TNG Acquisition (Re)*, 2013 ONSC 3098, at para. 31 stated: "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."

[17] The Court was provided with examples of where courts have granted CROs a broad authority to enter into agreements on behalf of debtors in *CCAA* proceedings.[3]

[18] I agree with the Monitor's submission that the authorization sought would provide certainty to the QIA and NTI that the Participation Agreement was properly executed and would enable the efficient administration of the SISP.

[19] I am satisfied that the Order should be made authorizing the CRO to execute the Participation Agreement.

Should the Court approve the sealing of the Participation Agreement?

[20] The Monitor asks that the Participation Agreement be sealed.

[21] I have set out above the *Sherman Estate* test. I am satisfied that the test has been met.

[22] The Participation Agreement contains confidential information regarding the mechanics of the QIA and NTI's participation in the SISP and confidential and commercially sensitive information regarding the manner in which the QIA and NTI will receive information and participate in the SISP. The parties entered into the Participation Agreement expecting it to be kept confidential. The Participation Agreement contains a confidentiality clause. The only reason it was filed with the court was because the Monitor was required to seek specific

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[3] *2345137 Alberta Ltd. et al (Re)* (27 August 2025), Calgary 2501-13057 (ABKB) (Amended and Restated CCAA Initial Order) at para. 35:

That, during the Stay Period, the CRO is authorized to oversee the Business and the Property, and otherwise exercise and perform the powers, responsibilities and duties as described in the CRO Engagement Letter, which shall include the exercise of all consent rights and matters of discretion reserved to the Debtors under the terms of this Order, together with such other powers, responsibilities and duties as may be agreed upon by the CRO, the Monitor and the Applicant (collectively, the "CRO Powers"). For the avoidance of doubt, the CRO Powers shall include the authority to enter into agreements or instruments on behalf of the Debtors. In exercising the CRO Powers, the CRO shall be deemed to be acting for and on behalf of the Debtors and not its personal or corporate capacity. [emphasis added]

Pride Group Holdings Inc. et al (Re) (27 March 2024), Toronto CV-24-00717340-00CL (ONSC) (Initial Order) at para. 27(d):

[grants the CRO certain powers including]: (d) take all steps and actions, enter into and execute all such agreements and documents in the name of and on behalf of the Pride Entities and incur such expenses and obligations necessary or incidental to the exercise of the foregoing powers;

authority from the Court for the CRO to execute the document. Courts have recognized the public interest in protecting information that has been "accumulated with a reasonable expectation of it being kept confidential:" *DCL Corporation (Re)*, 2023 ONSC 3686 at paras. 43-44. There is no reasonable alternative that would protect against this risk and the salutary effects of sealing the agreement outweigh any deleterious effects of sealing in this case. As noted by the Monitor, disclosure of the Participation Agreement may prejudice the QIA and NTI, and the Debtors, and impact negotiations with other stakeholders in respect of the SISP.

Should the Court approve the Monitor's Reports and the fees of the Monitor and its counsel?

[23] The Monitor seeks approval of the Reports[4] filed in these *CCAA* Proceedings, and the activities set out therein. The request to approve the Reports is not unusual and there are good policy and practical reasons for doing so: see *Laurentian University of Sudbury*, 2022 ONSC 2927 at paras. 13-14, citing *Target Canada Co. (Re)*, 2015 ONSC 7574 at paras. 2, 12, 22.

[24] No opposition to the approval of the Reports has been raised and the approval of the Reports is appropriate in the circumstances as the Monitor has acted reasonably and in good faith. The draft order provided contains the typical language that only the Monitor is entitled to rely on the approval.

[25] The Monitor also seeks approval of its fees and disbursements and those of its legal counsel as set out in the Sixth Report and the fee affidavits attached thereto. In this respect, as the Court of Appeal for Ontario held in *Bank of Nova Scotia v Diemer* 2014 ONCA 851 at paras 33 and 45, this Court does not undertake a line-by-line analysis of the invoices. Rather, the guiding principles on fee approvals of this nature are whether the fees are fair, reasonable, and proportionate given the value of the Applicants' assets and liabilities, as well as the complexity of the Applicants' business and the proceeding. In considering these guiding principles, the fees of the Monitor and its counsel are appropriate in light of the significant and complex issues involved in these *CCAA* Proceedings and are approved.

[26] Two orders to go in the form attached with immediate effect.

Date: Oct 29, 2026

Justice J. Steele

[4] The Pre-Filing Report, the First Report, the Second Report, the First Supplement, the Second Supplement, the Third Report, the Fourth Report, the Fifth Report, the Sixth Report, and the Supplement to the Sixth Report.