

**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

**RESPONDING FACTUM OF THE AD HOC COMMITTEE OF SENIOR SECURED
NOTEHOLDERS
(SISP Approval Motion)
(Returnable October 9, 2026)**

October 2, 2026

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TO: **THE SERVICE LIST**

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PART I - OVERVIEW¹

1. The ad hoc committee (the “**Ad Hoc Committee**”) represents over 70% of the \$575 million principal amount of 8.750% senior secured notes issued by Baffinland (as defined below). It is the Debtors’ (as defined below) largest pre-filing secured creditor constituency. Its members are significant funds who routinely invest in distressed and non-distressed companies, including acting as debtor in possession (“**DIP**”) lenders to CCAA debtors conducting Court-approved sales and investment solicitation processes (“**SISP**”).
2. The Ad Hoc Committee supports Export Development Canada’s (“**EDC**”, or the “**DIP Lender**”) position and its request for approval of its proposed form of SISP that provides for Court officers as the final decision makers, rather than the Debtors’ proposal that designees of the Operating Committee (the “**Operating Committee**”) (which is conflicted) control the outcome of a key piece of this restructuring.
3. From the perspective of the Ad Hoc Committee, there are three fundamental flaws with the Debtors’ startling proposal:
 - (a) It creates the unnecessary and destabilizing risk of a DIP default because it proposes a SISP that is not reasonably acceptable to EDC as DIP Lender;
 - (b) It violates not only EDC’s contractual rights under the DIP agreement (the “**DIP Agreement**”) that was entered into by the Debtors and approved by the Court, but also violates a key building block of this proceeding, upon which the Ad Hoc Committee has relied – the thoroughly negotiated terms of the DIP Resolution and related orders on which the parties agreed to resolve their disputes; and

¹ Terms not defined herein have the meanings set forth in the Affidavit of Ashley Glen sworn September 21, 2026 [*Glen Affidavit*].

- (c) It is contrary to all usual CCAA governance rules to allow the tentacles of shareholders, who themselves hold concerning related party contracts with the Debtors, to dictate the outcome of the SISP when there are two independent Court officers (the Monitor and CRO) available to ensure that the SISP is not just conducted but completed in a manner fair to all stakeholders.
4. The Ad Hoc Committee firmly believes that a neutral third party – the CRO or the Monitor – must have the decision-making authority in the proposed SISP to ensure that no party is advantaged (or disadvantaged).
5. The Debtors’ straw man argument – that this amounts to a replacement of the board – is a deliberate tactic to distract the Court from the actual issue in dispute. Neither the Ad Hoc Committee nor EDC is asking for the removal of the “non-board” that has contractually been empowered to control the Debtors on behalf of the shareholders. Instead, all the Debtors’ secured lenders are asking for is the enforcement of the existing DIP Agreement.
6. By submitting a SISP that is knowingly objectionable to the DIP Lender’s (and other secured creditors’) reasonable concerns, the Operating Committee is playing chicken with the DIP Lender, betting that the DIP Lender will not call a default and will allow the Operating Committee to take risks with secured lender collateral. Such gamesmanship and the instability that goes with it should not be countenanced by this Court.

PART II - SUMMARY OF FACTS

A. The DIP Resolution and EDC’s Approval Right

7. On May 15, 2026, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**Initial Order**”), among other things: (i) granting protection 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"**).²

8. Following the Initial Order, the Debtors continued a DIP solicitation process that they had initiated pre-filing and ultimately selected the EDC DIP (the **"EDC DIP"**). The Ad Hoc Committee, along with the Debtors' first lien lenders, Oaktree Capital Management, L.P. and Hartree Partners, LP (collectively, with the Ad Hoc Committee, the **"Senior Secured Lenders"**), opposed the EDC DIP because, among other things, it primed the existing secured lenders' security.³

9. After nearly a month of litigation, the Senior Secured Lenders agreed to support the EDC DIP, and the Debtors and EDC agreed to provide the Senior Secured Lenders with certain forms of adequate protection (the **"DIP Resolution"**). The DIP Resolution confirmed that the Debtors would pursue a SISP and outside resources would be retained to facilitate the process. The DIP Lender's consent right over the SISP was a critical factor for the Ad Hoc Committee in agreeing to the DIP Resolution because it confirmed that a secured lender perspective would be incorporated in the ultimate SISP agreed to with the Debtors.⁴

10. Consistent with the DIP Resolution, the Debtors, the DIP Lender and the Senior Secured Lenders selected both a CRO and a transaction advisor. On the Debtors' motions, (i) on July 29, 2026, the Court granted an order (the **"CRO Appointment Order"**)⁵ approving the appointment of BlueTree Advisors Inc. to provide the services of William E. Aziz as Chief Restructuring Officer

² *In the Matter of Nunavut Iron Ore Inc. et al.* (May 15, 2026), ONSC (Commercial List), Court File No. CL-26-00000219-0000, [Initial Order](#).

³ *Re Nunavut Iron Ore*, [2026 ONSC 3467](#) at para [38](#).

⁴ Affidavit of Jowdat Waheed sworn September 17, 2026 [*Waheed Affidavit*] at paras 19-22. Motion Record of the Applicants dated September 17, 2026 [*MRA*], pp 13-14.

⁵ *In the Matter of Nunavut Iron Ore Inc. et al.* (July 29, 2026), ONSC (Commercial List), Court File No. CL-26-00000219-0000, [CRO Appointment Order](#).

(the “**CRO**”) and (ii) on August 27, 2026, the Court approved the engagement of Morgan Stanley Canada Limited as the transaction advisor.⁶

B. The Proposed SISP

11. The Debtors now seek an order approving a form of SISP that is not acceptable to the DIP Lender or the Senior Secured Lenders, principally because the ultimate decision to select a prevailing purchaser, or any purchaser, rests with the Operating Committee instead of a neutral and independent third party.

12. Recognizing the obvious, that the Operating Committee cannot act in a disinterested manner, the Debtors propose an equally problematic sub-form of conflict. They suggest that each group of shareholders will appoint an “independent” designee who will answer to the applicable group of shareholders.⁷ As set out in the DIP Lender’s factum, this procedure falls short of solving the actual and potential conflicts of interest.

C. The Independence Mandate

13. In connection with the SISP, the shareholders have proposed that each of them will appoint an “independent member” who will serve solely when the shareholder designees are determined to be conflicted. Pursuant to the Mandate of the Independent Members of the Operating Committee, dated September 16, 2026 (the “**Independent Member Mandate**”), each “independent” member is selected and compensated by the relevant shareholders. In addition, the Independent Member Mandate provides that a portion of section 3.1 of the USA (as defined below), which purports to absolve the Operating Committee of any “regard to duties or obligations that otherwise would be applicable”, will not be applicable during these CCAA proceedings.

⁶ *In the Matter of Nunavut Iron Ore Inc. et al.* (Aug 27, 2026), ONSC (Commercial List), Court File No. CL 26-00000219-0000, [Omnibus Order](#).

⁷ *Glen Affidavit* at paras 47-48.

Notably, the section of 3.1 of the USA that explicitly waives the claim for breach of fiduciary duty against the Operating Committee and the directors for their conduct remains.⁸

14. The night before the initially scheduled hearing on the SISP approval, the Debtors served an affidavit from a representative of the majority shareholder, EMG, which among other things, confirmed that EMG would not terminate its independent member during the course of the CCAA proceeding absent Court approval.⁹

PART III - THE ISSUE TO BE DETERMINED

15. The only issue to be determined is whether the Court should grant a SISP acceptable to the DIP Lender, as required by the DIP Agreement, or whether an alternate version, championed by the shareholders, should be approved.

PART IV - LAW & ARGUMENT

The Debtors May Force the DIP Lender to Call a Default – and Put the Secured Lenders' Collateral and the Success of the Restructuring At Risk

16. The Operating Committee's disregard for the provisions of the EDC DIP put the stability of the Debtors' business at risk. It is an event of default under the EDC DIP for the Debtors to fail to comply with any term of the EDC DIP. Section 27 of the EDC DIP specifically requires that "[a]ll terms of the SISP...must be acceptable to the DIP Lender in its reasonable discretion."¹⁰

17. In pursuing a SISP that the Debtors (under the direction of the Operating Committee) know is unacceptable to EDC, they have put the availability of future funding at risk; EDC may call a default under the EDC DIP prior to the hearing on this motion and refuse to advance further funds, seek the appointment of a receiver, or exercise other remedies. In short, the Operating Committee

⁸ *Waheed Affidavit* at Exhibit K at s. 2(f), *MRA*, pp 213-214.

⁹ Affidavit of John Calvert sworn September 23, 2026 at para 24 [*Calvert Affidavit*].

¹⁰ *Waheed Affidavit* at Exhibit C s. 27, *MRA*, p 122.

is asking the existing secured lenders (and other stakeholders) to bear the risk of its decision to move forward with a SISP it knows is unacceptable to the DIP Lender.

18. The Debtors' willingness to take on such risk with no good cause underlines the governance problem at the heart of this motion. The Operating Committee has already established that it cannot be trusted to determine the outcome of the SISP in anything other than its own favour. Their ongoing objection only underscores this conclusion. The Court Officers, of course, have no such bias.

The DIP Lender's Consent over the SISP is Consistent with Prior Court Orders

19. Revising the DIP Lender's consent right undermines the prior orders of this Court and the heavily contested approval of the DIP Agreement and the ensuing closely negotiated DIP Resolution.

20. It is a central principle of CCAA proceedings that prior orders are the foundation of a restructuring. As Regional Senior Justice Morawetz (as he was then) explained in *Target Canada Co. (Re)*:¹¹

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

21. More recently, Justice Osborne noted that "[t]he integrity of the restructuring process depends on stakeholders being able to rely on court orders as final and binding." Allowing a

¹¹ *Target Canada Co. (Re)*, [2016 ONSC 316](#) at para [81](#).

stakeholder to revisit an issue already resolved “would be to allow the ‘never closing revolving door’ that the finality doctrines (of *functus officio*) are designed to prevent.”¹²

22. The EDC DIP was approved pursuant to the Second Amended and Restated Initial Order, dated June 11, 2026 (the “**Second ARIO**”), subject to the right of the Senior Secured Lenders to be heard on a *de novo* basis at a date set by the Court.¹³ Following intensive litigation and negotiations, the parties entered into the DIP Resolution, which was again, approved by the Court.¹⁴ The EDC DIP approved in the Second ARIO and affirmed in the Settlement Approval Order, dated June 30, 2026, provides that *the SISP must be acceptable to the DIP Lender*.¹⁵ This term was bargained for and supported by binding orders. Permitting the Debtors to effectively re-trade the EDC DIP and the DIP Resolution at this stage runs contrary to the principles of the CCAA and the settled case law emanating from this Court.

23. This is a concern for the Ad Hoc Committee as well as EDC, because the Ad Hoc Committee relied on that consent right of the DIP Lender as a minimum bulwark against conflicts and other debtor-driven concerns rearing their heads in the SISP decision making process.

24. The Debtors now argue that all governance concerns were resolved pursuant to the DIP Resolution and such arguments have been waived because nothing has changed since the DIP Resolution.¹⁶ This position is disingenuous to the point of deliberate obtuseness. The conflict issue was resolved because the form of the SISP was not left in the hands of the Operating Committee. EMG and the Debtors’ position is that every issue should have been litigated to the

¹² *In Re Hudson’s Bay Company*, [2026 ONSC 4305](#) at paras [44](#), [45](#).

¹³ *In the Matter of Nunavut Iron Ore Inc. et al.* (June 11, 2026), ONSC (Commercial List), Court File No. CL-26-00000219-0000, [Second Amended and Restated Initial Order](#).

¹⁴ *In the Matter of Nunavut Iron Ore Inc. et al.* (June 30, 2026), ONSC (Commercial List), Court File No. CL-26-00000219-0000, [Settlement Approval Order](#); see also *In the Matter of Nunavut Iron Ore Inc. et al.* (June 30, 2026), ONSC (Commercial List), Court File No. CL-26-00000219-0000, [Endorsement of Steele, J.](#) at para 7.

¹⁵ *Glen Affidavit* at para 26.

¹⁶ *Waheed Affidavit* at paras 11, 64-65, *MRA*, pp 11, 31.

death rather than resolved in the interest of furthering the restructuring. The Operating Committee itself has now brought its conflict problems to a head. It simply emphasizes the problems inherent in leaving the Operating Committee in control of this particular step in the CCAA proceedings.

The Operating Committee Governance Structure is Inherently Atypical

25. The Debtors' SISP proceeds from the false premise that they entered into CCAA as debtors-in-possession with the typical corporate governance of a full and unconflicted board of directors with long-standing duties to the company at large. The Debtors' pre-filing governance was, in fact, anything but typical.

26. Under the pre-filing unanimous shareholder agreement (the "**USA**"), the shareholders delegated all director duties to an "Operating Committee". The Operating Committee:

- (a) is not itself a board of directors;
- (b) owes duties only to their appointing shareholders; and
- (c) in a radical divergence from usual governance (if even legally permissible), is purported to have no fiduciary obligations to the corporation pursuant to the terms of the USA.¹⁷

27. The Debtors have filed a reply affidavit of Mr. Calvert, a representative of the shareholder, EMG, attempting to defend the state of affairs. He asserts, paradoxically, that the USA "was not drafted with a CCAA proceeding in mind", but he points to no part of the pre-existing USA that confirms that the Operating Committee will behave differently in the context of a CCAA.

¹⁷ *Glen Affidavit* at Exhibit A, ss. 3.1(c), 17(c).

28. More fundamentally, his assurance that the Operating Committee will act in accordance with general fiduciary obligations is of cold comfort in light of the undenied and undeniable shareholder-biased structure of the Operating Committee. Removing 3.1(c) may eliminate the protection for shareholder bias, but it hardly establishes a new neutrality. The proof of the pudding is in the eating. The only reason for the Operating Committee to resist Court officer decision making so vociferously is to maintain the underlying shareholder influence.

29. Enhancing the Ad Hoc Committee's concerns over the shareholder influence is the existence of related party contracts with those same shareholders and the Debtors. Those contracts are currently under consideration by the Monitor, including as potential transfers at undervalue.¹⁸

30. It is common practice in CCAA proceedings to grant the power to select bids in a SISP or other fundamental restructuring steps to a neutral third party, particularly where there are allegations of conflict of interest, either because the current board and management may be participating or because they have alternative commercial interests.¹⁹ For instance, in circumstances where the Debtors were conflicted with respect to potential oppression litigation, including because of an interest in dissuading other bidders, the Monitor was given full authority and conduct over those litigation proceedings.²⁰ Similarly here, the Ad Hoc Committee supports the CRO assuming a specific function in the restructuring, and is not seeking the replacement of the board or the Operating Committee.

¹⁸ *Glen Affidavit* at paras 9-12; *Waheed Affidavit* at para 73, *MRA*, pp 33-34; Appendix D to the Fourth Report of the Monitor dated August 25, 2026, p 74.

¹⁹ *Walter Energy Canada Holdings, Inc. (Re)*, [2016 BCSC 107](#) at paras [19](#), [27](#), [31](#), [48](#): (Mr. Aziz, in his capacity as CRO, was authorized to select one or more successful bids in the SISP); *In the Matter of Toys "R" Us (Canada) Ltd./Toys "R" Us (Canada) Ltée* (April 1, 2026), ONSC (Commercial List), Court File No. CL-26-00000042-0000, [SISP Approval Order](#) (monitor was authorized to designate the successful bid).

²⁰ *Ernst & Young Inc. v. Essar Global Fund Ltd.*, [2017 ONCA 1014](#) at paras [122-125](#).

31. The unusual governance structure here has led to anything but the typical “debtor-driven” CCAA proceeding trope that the Debtors rely on in their factum. Early in these proceedings, the Monitor alluded to the dysfunction at the Operating Committee, suggesting that a CRO be put in place “based on stakeholder feedback and the Monitor’s observations of the CCAA Proceedings to date (including through its participation in the meetings of the Operating Committee, which includes representatives from the Debtors’ two shareholder groups)....”²¹ While the Monitor may have been protecting the Debtors’ fragile business at the time with its discretion, the Operating Committee’s refusal to take the obvious steps to alleviate stakeholder concern is just more evidence of their misplaced allegiances.

32. The Ad Hoc Committee, and, as importantly, participants in the SISP, can have no assurance that the Operating Committee or its designees will not continue to perpetuate their pre-filing pattern of exclusively favouring their own interests. That risk in turn places the value maximizing nature of the SISP, the process that all stakeholders understand is central to this CCAA proceeding, in doubt.

PART V - ORDER REQUESTED

33. For the reasons set forth herein and the reasons set forth in the factum of the DIP Lender dated October 2, 2026, the Ad Hoc Committee respectfully requests that the Court approve the form of SISP proposed by the DIP Lender.

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

Cassels Brock & Blackwell LLP

²¹ Second Report of the Monitor dated June 4, 2026 at para 72.

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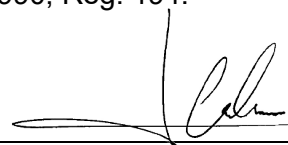
SCHEDULE "A"

LIST OF AUTHORITIES

1. *Ernst & Young Inc. v. Essar Global Fund Ltd.*, [2017 ONCA 1014](#)
2. *In Re Hudson's Bay Company*, [2026 ONSC 4305](#)
3. *In the Matter of Nunavut Iron Ore Inc. et al.* (July 29, 2026), ONSC (Commercial List), Court File No. CL 26-00000219-0000, [CRO Appointment Order](#)
4. *In the Matter of Nunavut Iron Ore Inc. et al.* (June 11, 2026), ONSC (Commercial List), Court File No. CL-26-00000219-0000, [Second Amended and Restated Initial Order](#).
5. *In the Matter of Nunavut Iron Ore Inc. et al.* (June 30, 2026), ONSC (Commercial List), Court File No. CL-26-00000219-0000, [Endorsement of Steele, J.](#)
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8. *In the Matter of Nunavut Iron Ore Inc. et al.* (Aug 27, 2026), ONSC (Commercial List), Court File No. CL 26-00000219-0000, [Omnibus Order](#)
9. *In the Matter of Toys "R" Us (Canada) Ltd./Toys "R" Us (Canada) Ltée* (April 1, 2026), ONSC (Commercial List), Court File No. CL-26-00000042-0000, [SISP Approval Order](#)
10. *Re Nunavut Iron Ore*, [2026 ONSC 3467](#)
11. *Target Canada Co. (Re)*, [2016 ONSC 316](#)
12. *Walter Energy Canada Holdings, Inc. (Re)*, [2016 BCSC 107](#)

I, Joshua Gordon, am satisfied as to the authenticity of every authority cited in this factum, and that every quotation cited herein accurately reproduces the text of such authority, in accordance with Rule 4.06.1(2.1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

Date October 2, 2026


Signature

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

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