Court File No.: CL-26-00000484-0000

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 STONEPEAK FALCON HOLDINGS INC., STONEPEAK FALCON GUARANTOR ULC, XPLORE INC., XPLORE SPECTRUM INVEST HOLDINGS INC., XPLORE SPECTRUM HOLDINGS INC., XPLORE SPECTRUM 1 INC., XPLORE FIBRE CO-INVEST HOLDINGS INC., XPLORE FIBRE UBF-EAST HOLDINGS INC., XPLORE FIBRE UBF-EAST NETWORK INC., XPLORE FIBRE AHSIP HOLDINGS INC., XPLORE FIBRE AHSIP NETWORK INC., XPLORE FIBRE UBF-WEST-NL HOLDINGS INC., AND XPLORE FIBRE UBF-WEST-NL NETWORK INC.

Applicants

FACTUM OF THE APPLICANTS
(Motion for ARIO)
Returnable November 19, 2026

November 17, 2026

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PART I – INTRODUCTION

1. On November 10, 2026, this Court granted the Applicants' application for an Initial Order under the CCAA, which, among other things, granted a stay of proceedings in favour of the Applicants and extended its protections and authorizations to the Non-Applicant Limited Partnerships (together with the Applicants, the "**Xplore Group**" or the "**Company**") until and including November 20, 2026 (the "**Stay Period**"), appointed FTI Consulting Canada Inc. as monitor (the "**Monitor**"), and approved the DIP Agreement and authorized borrowings of up to $77 million thereunder during the initial 10-day stay period (the "**Initial Stay Period**").[1]

2. The Company now returns to Court at the Comeback Hearing seeking an Amended and Restated Initial Order (the "**ARIO**") which, among other things:

(a) extends the Stay Period until and including February 5, 2027;

(b) authorizes the Xplore Group to borrow up to the full Facility Amount of $154.5 million under the DIP Agreement and increases the DIP Charge accordingly;

(c) approves a key employee retention plan (the "**KERP**") and grants a charge in favour of the KERP participants in the maximum amount of $3.2 million (the "**KERP Charge**");

(d) approves and ratifies the engagement of Perella Weinberg Partners LP ("**PWP**"), as financial advisor, pursuant to the terms of its engagement letter (the "**PWP**

[1] Capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Affidavit of William E. Aziz sworn November 16, 2026 (the "**Aziz Affidavit**") or the Affidavit of William E. Aziz sworn November 10, 2026 (the "**Initial Aziz Affidavit**"), as applicable. Unless otherwise stated, all monetary amounts referenced herein are in Canadian dollars.

Engagement Letter"), and grants a charge to secure the fees and other amounts payable thereunder (the "**Financial Advisor Charge**");

(e) bifurcates and increases the Directors' Charge into a priority charge in the maximum amount of $15 million (the "**Priority Directors' Charge**") and a subordinated charge in the maximum amount of $45 million (the "**Non-Priority Directors' Charge"**);

(f) increases the Administration Charge to a maximum amount of $5.5 million; and

(g) seals the Confidential Supplement containing an unredacted copy of the PWP Engagement Letter and a listing of the KERP Recipients and their respective Retention Payments.

3. The increase in permitted borrowings up to the full Facility Amount is necessary to finance the Xplore Group's operations during these CCAA proceedings and its pursuit of potential recapitalization, refinancing, restructuring, sale or other value-maximizing transactions. The remaining relief extends the Stay Period, authorizes an increase to the Administration Charge to secure the professional fees and disbursements expected to be incurred during the proposed extension of the Stay Period, authorizes an increase to the Directors' Charge to account for the increased potential exposure of the directors and officers during that period, approves the KERP to incentivize key employees to remain with the Company during these CCAA proceedings, and secures the continued services of PWP.

4. The granting of the ARIO in the form sought by the Company is supported by Stonepeak, the Lender Committee and the Monitor. The Xplore Group submits that the requested relief is fair

and reasonable and necessary to enable the Company to advance these CCAA proceedings for the benefit of a broad range of stakeholders.

PART II– SUMMARY OF FACTS

A. Background Regarding the Company

5. Background information regarding the Xplore Group and these CCAA proceedings is more fully set out in the Initial Aziz Affidavit filed in support of the Initial Order, and the Aziz Affidavit filed in support of the relief sought on this motion, and is not repeated here except as necessary.

6. The Xplore Group is Canada's largest rural-focused internet service provider, employing approximately 1,100 employees and providing internet access to hundreds of thousands of Canadian subscribers through its Fixed Wireless Business, Satellite Business and Fibre Business.[2]

7. The Xplore Group's liquidity situation deteriorated in the months leading up to the CCAA proceedings and, despite extensive discussions with Stonepeak and the Lender Committee regarding out-of-court financing options, the parties were unable to reach agreement on an implementable financing outside of a CCAA process. After considering all options and alternatives, the Xplore Group Independent Committees determined that commencing these CCAA proceedings to obtain DIP financing and continue the Company's ongoing pursuit of strategic options and alternatives was in the best interests of the Company and its stakeholders. [3]

(i) Developments Since the Initial Order

8. Since the granting of the Initial Order, the Xplore Group, with the assistance of the Monitor, has, among other things: (a) drawn the Initial Advances in full and used a portion of the Initial Spectrum Advance to repay the Bridge Term Loan in full; (b) advised employees, suppliers, third-

[2] Initial Aziz Affidavit at para. 9 [A62].
[3] Initial Aziz Affidavit at paras. 26-27 [A69].

party dealers and other stakeholders of these proceedings and implemented a comprehensive communications plan; (c) responded to numerous creditor and stakeholder inquiries regarding the CCAA proceedings and the impact on existing services and agreements; (d) advanced discussions with government representatives regarding the Company's strategic objectives and potential options for government support; (e) stabilized the Business and operations within these CCAA proceedings; and (f) continued its efforts to advance potential transaction opportunities relating to certain elements of its Business.[4]

B. The Proposed ARIO

(i) Extension of the Stay Period

9. The Stay Period currently expires on November 20, 2026.[5] The Xplore Group is requesting an extension of the Stay Period until and including February 5, 2027. The extension of the Stay Period is necessary to maintain continued stability while the Company seeks to advance its restructuring efforts, including the review and pursuit of potential recapitalization, refinancing, restructuring, sale or other strategic transactions to maximize value for the Xplore Group's stakeholders. In furtherance of these efforts, during the extended Stay Period, the Company intends to bring a motion seeking approval of a sale and investment solicitation process (a "**SISP**"). The Company is also continuing to actively evaluate and pursue a number of potential transaction alternatives, including pre-emptive transactions in respect of certain components of its Business, a standalone restructuring or reorganization, a plan of arrangement under the CCAA, and other strategic transactions. Subject to the approval of the Court, any of these alternatives may be implemented either within or outside the SISP. The extended Stay Period will afford the Company

[4] Aziz Affidavit at paras. 10 and 17-18 [A38, A40].
[5] *Xplore Inc. et al*, Initial Order issued November 10, 2026 [Court File No. CL-26-00000484-0000] at para. 12 [*Xplore Initial Order*].

the time and stability required to pursue these alternatives in a manner that preserves and maximizes value for the benefit of all stakeholders.[6]

(ii) Approval of the DIP Facility and the DIP Charge

10. In connection with the commencement of these CCAA proceedings, the Applicants entered into the DIP Agreement with the DIP Lenders, pursuant to which the DIP Lenders agreed to make the DIP Facility available. The DIP Facility is a senior secured, super-priority, non-revolving credit facility in the aggregate principal amount of $154.5 million, comprised of (a) the Spectrum Tranche available to Xplore Inc. of up to $114.1 million; and (b) the Fibre Tranche available to Xplore Fibre L.P. of up to $40.4 million.[7]

11. The Initial Order authorized borrowings of up to $77 million and granted the DIP Charge to secure that amount, plus interest, fees and expenses.[8] Following the granting of the Initial Order, the Initial Advances were drawn in full, and approximately $53.3 million of the Initial Spectrum Advance was used to repay the Bridge Term Loan in full.[9]

12. The DIP Agreement provides for the following fees (the "**DIP Fees**"): (a) the Backstop Fee equal to 7.00% of each Backstop Party's Backstop Commitment, paid in kind to Backstop Parties in the form of additional Advances under the DIP Facility; (b) the Commitment Fee equal to 3.10% of the Facility Amount, paid in kind to DIP Lenders in the form of additional Advances under the DIP Facility; (c) the Exit Fee equal to 5.00% of the Advances made under the DIP Facility, paid in cash to DIP Lenders upon the earlier of the completion of a Restructuring Transaction and the repayment in full of the DIP Facility; and (d) the Consent Fee equal to the

[6] Aziz Affidavit at paras. 26-27 [A42-A43].
[7] Aziz Affidavit at para. 15 [A40]; Initial Aziz Affidavit at para. 173 [A118].
[8] *Xplore Initial Order* at paras. 32 and 35.
[9] Aziz Affidavit at paras. 16-18 [A40].

recovery that would be applicable to $20 million of Second Out Term Loans, paid in cash to the Bridge Lenders at the same time as the Exit Fee becomes payable, in consideration for their consent to the DIP Facility and related matters.[10]

13. Each of the DIP Fees is fully earned upon the granting of the ARIO. The Backstop Fee, the Commitment Fee and the Exit Fee form part of the Obligations secured by the DIP Charge. The Consent Fee is not secured by the DIP Charge.

14. It is a condition to each Subsequent Advance that the Court grant the ARIO authorizing borrowings up to the Facility Amount and increasing the DIP Charge accordingly. The ARIO maintains the structure of the Spectrum DIP Charge, Fibre Borrower DIP Charge and Fibre Guarantor DIP Charge, increasing each to secure, respectively, all Obligations, all Obligations other than the Bridge Payout Amount, and all Fibre Tranche Obligations.[11]

(iii) Increase to the Administration Charge

15. The proposed ARIO increases the quantum of the Administration Charge to $5.5 million in light of the significant level of activity anticipated for the Company's counsel and the Monitor and its counsel during peak periods of the CCAA proceedings, including in the early states of these CCAA proceedings as the Company and the Monitor work to stabilize the Business, engage with a wide variety of stakeholders with the respect to the impact of the CCAA proceedings, and prepare for the commencement of the SISP.[12]

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[10] Initial Aziz Affidavit at para. 173 [A118]; Pre-Filing Report of FTI Consulting Canada Inc., in its capacity as proposed Monitor, dated November 10, 2026 (the "**Pre-Filing Report**") at para. 33(f) [E36].
[11] Aziz Affidavit at paras. 23-24 [A41, A42].
[12] Aziz Affidavit at para. 55 [A51].

(iv) Increase to the Directors' Charge

16. The Initial Order granted the Directors' Charge in the amount of $10 million, which amount was intended for the Initial Stay Period only.[13] The proposed ARIO bifurcates the Directors' Charge into the Priority Directors' Charge in the maximum amount of $15 million, which will retain the priority of the existing Directors' Charge, and the Non-Priority Directors' Charge in the maximum amount of $45 million, which will rank subordinate to all other Charges.

17. The increase of the Directors' Charge has been calculated based on the estimated potential exposure of the Directors and Officers in respect of potential sales taxes and employment-related obligations, including under the *Canada Labour Code* (the "**CLC**"). Under the CLC, directors are potentially jointly and severally liable for wages and other amounts to which an employee is entitled under Part III of the CLC (including vacation pay, pay in lieu of notice and severance), in each case as prescribed pursuant to the CLC and subject to a maximum per-employee amount equivalent to six months' wages.[14]

18. The D&O Policies provide up to $20 million of "Side ABC" coverage and up to $7 million in Side "A" coverage, but are subject to exclusions, limitations and potential exhaustion. The Directors and Officers have been actively involved in the Xplore Group's efforts to address its circumstances, including the pursuit of recapitalization and financing alternatives and the preparation for and commencement of these proceedings. The Applicants require, and stakeholders will benefit from, their active and committed involvement during these CCAA proceedings.[15]

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[13] *Xplore Initial Order* at para. 21.
[14] Aziz Affidavit at paras. 50 [A49]; Pre-Filing Report at paras. 61 and 63 [E45]; First Report of the Monitor dated November 17, 2026 (the "**First Report**") at para. 23 [E9].
[15] Aziz Affidavit at para. 51 [A50]; Initial Aziz Affidavit at paras. 190 and 193 [A133]; Pre-Filing Report at para. 64 [E45]; First Report at para. 25 [E10].

(v) The KERP and the KERP Charge

19. The Company, under the oversight of the Xplore Group Independent Committees, has developed the KERP to facilitate and encourage the continued participation of key employees during these CCAA proceedings. The retention of key employees is of vital importance to the Company during these CCAA proceedings, including in connection with maintaining ongoing business operations and pursuing and implementing strategic options and alternatives to maximize value for the benefit of all stakeholders.[16]

20. The KERP entitles the KERP Recipients to a retention bonus based on a specified percentage of their base salary (the "**Retention Payments**"), payable in instalments as follows: 20% on December 31, 2026; 20% on April 30, 2027; and 60% upon completion of a Qualifying Fixed Wireless Transaction (or, if no such transaction occurs before August 31, 2027, 40% on August 31, 2027 and 20% on the earlier of December 31, 2027 and completion of a Qualifying Fixed Wireless Transaction).[17]

21. The KERP Recipients have significant knowledge and responsibility with respect to the Xplore Group and its operations, and will be instrumental in the Company's efforts to pursue and implement value-maximizing strategic alternatives. The maximum aggregate Retention Payments are approximately $3.2 million, and a listing of the KERP Recipients and their Retention Payments is contained in the Confidential Supplement.[18]

(vi) PWP Engagement and Financial Advisor Charge

22. PWP, which advised the Company on the 2024 Recapitalization Transaction, has been instrumental in evaluating recapitalization and financing proposals with Stonepeak and the Lender

[16] Aziz Affidavit at paras. 39 and 43 [A46, A47, A48].
[17] Aziz Affidavit at para. 40 [A47].
[18] Aziz Affidavit at paras. 41-42 and 45 [A47, A48].

Committee and in negotiating the DIP Facility. The PWP Engagement Letter was executed on November 3, 2026, effective September 24, 2026, and its negotiation was overseen by the Xplore Group Independent Committees.[19]

23. The PWP Engagement Letter provides for: (a) a Monthly Fee of US$150,000, with 50% of Monthly Fees paid in excess of US$600,000 credited one time against the first to occur of any Financing Fee or Completion Fee; (b) a Financing Fee calculated as a specified percentage of the face amount of debt financing obtained (including DIP financing), 50% of which is credited against any Completion Fee and which is reduced for DIP financing provided by Stonepeak and the Lender Committee; and (c) a fixed Completion Fee payable on completion of a recapitalization, plan of arrangement or restructuring transaction or a sale of all or a significant portion of the equity, assets or businesses of the Xplore Group. Certain "Excluded Transactions" do not give rise to any fees.[20]

24. The Applicants seek approval of the PWP engagement, authorization to pay PWP's fees and expenses, and the Financial Advisor Charge to secure them. Stonepeak, the Lender Committee and the Monitor have reviewed the unredacted PWP Engagement Letter and support the requested relief.[21]

(vii) Proposed Priority of the Charges

25. The ARIO provides for the following priority of the Charges, which rank in priority to all Encumbrances other than those validly registered as of the date of the Initial Order against (a) the Fibre Guarantor Collateral in favour of Computershare Trust Company of Canada, as collateral agent for Canada Infrastructure Bank, and (ii) the Property of Xplore Inc. in favour of Enterprise

[19] Aziz Affidavit at paras. 31-32 and 34 [A44, A45]; Initial Aziz Affidavit at para. 152 [A111].
[20] Aziz Affidavit at paras. 33-34 [A44, A45].
[21] Aziz Affidavit at para. 36 [A46]; First Report at para. 53.

Fleet Management Canada, Inc., Royal Bank of Canada, Cisco Systems Capital Canada Co. and Element Fleet Management Inc:

(a) Administration Charge (to a maximum of $5.5 million);

(b) Priority Directors' Charge (to a maximum of $15 million);

(c) KERP Charge (to a maximum of $3.2 million);

(d) Financial Advisor Charge (in the amount of the fees and other amounts payable to PWP under the PWP Engagement Letter);

(e) DIP Charge (to a maximum of the Facility Amount, plus accrued and unpaid interest, fees (including the Exit Fee, the Commitment Fee and the Consent Fee) and expenses); and

(f) Non-Priority Directors' Charge (to a maximum of $45 million).

26. Following the granting of the Initial Order, Goodmans provided copies of the Application Record and Initial Order to certain additional parties with PPSA registrations that had not been served in advance of the initial hearing, and all parties with PPSA registrations against the Xplore Entities that will be primed by the Charges have been served with the Motion Record for the Comeback Hearing.[22]

[22] Lawyer's Certificate of Service of Erik Axell dated November 17, 2026 [*Axell Certificate of Service*].

27. The DIP Agreement permits the Administration Charge, the Priority Directors Charge, the KERP Charge and the Financial Advisor Charge as "Permitted Priority Liens" and permits the Non-Priority Directors' Charge as a "Permitted Lien."[23]

PART III – THE ISSUES AND THE LAW

28. The issues to be considered on this motion are whether the Court should grant the ARIO in order to, among other things:

(a) extend the Stay Period until and including February 5, 2027;

(b) increase the amounts which may be borrowed by the Applicants under the DIP Facility and approve a corresponding increase to the DIP Charge;

(c) increase the Administration Charge;

(d) increase and bifurcate the Directors' Charge;

(e) approve the KERP and grant the KERP Charge in favour of the KERP participants;

(f) approve the PWP Engagement Letter and grant the Financial Advisor Charge; and

(g) seal the Confidential Supplement.

29. The Applicants respectfully submit that the Court should grant all of the foregoing relief.

A. The ARIO should be Granted

(i) The Stay Period Should be Extended

30. The current Stay Period expires on November 20, 2026. Pursuant to subsections 11.02(2) and (3) of the CCAA, the Court may extend a stay of proceedings for any period that the Court considers necessary where: (a) circumstances exist that make the order appropriate; and (b) the

[23] Aziz Affidavit at paras. 44, 53 and 56 [A48, A50, A51]; Initial Aziz Affidavit at para. 173 [A118].

debtor company satisfies the Court that it has acted, and is acting, in good faith and with due diligence.[24]

31. The Xplore Group submits that an extension of the Stay Period until and including February 5, 2027 is appropriate in the circumstances given, among other things:

(a) the Company requires an extension of the Stay Period to maintain stability, continue operating in the ordinary course, and continue to review and pursue strategic alternatives, both within and outside the proposed SISP, including potential pre-emptive transactions in respect of certain components of its Business, a standalone restructuring or reorganization, a plan of arrangement under the CCAA, and other strategic transactions;

(b) the Xplore Group has acted, and continues to act, in good faith and with due diligence, including by stabilizing the Business, communicating with stakeholders and advancing discussions with government representatives;

(c) as reflected in the Cash Flow Forecast, with access to the full Facility Amount, the Xplore Group is expected to have sufficient liquidity to fund its operations and these proceedings throughout the extended Stay Period;

(d) creditors will not suffer any material prejudice if the Stay Period is extended. To the contrary, they will benefit from the Xplore Group's efforts to identify a value-maximizing transaction; and

(e) Stonepeak, the Lender Committee and the Monitor support the extension.[25]

[24] CCAA, subsection 11.02(2) and (3).
[25] Aziz Affidavit at paras. 26-30 and 69 [A42-A44, A55]; First Report at paras. 43-48 [E13-E14].

32. Accordingly, the Applicants respectfully submit that the Stay Period should be extended until and including February 5, 2027.

(ii) The DIP Facility and the DIP Charge Should be Increased

33. As set out above, the Applicants seek authorization to borrow up to the full Facility Amount of $154.5 million and a corresponding increase to the DIP Charge.

34. The Xplore Group requires access to the full Facility Amount to provide it with the funding necessary during these CCAA proceedings to continue its business and operations, fund targeted fibre expenditures and advance its restructuring efforts.[26]

35. The Company addressed the factors under subsections 11.2(1) and (4) of the CCAA that the Court must consider in deciding whether to approve DIP financing and grant a priming charge in its factum dated November 10, 2026, submitted in support of the Initial Order (the "**Initial Order Factum**").[27] For the same reasons as set out in the Initial Order Factum, the Applicants submit that the requested increases to the Facility Amount and the DIP Charge are necessary in the circumstances and that the criteria in subsections 11.2(1) and 11.2(4) of the CCAA are satisfied. In addition, the following factors support approval of the DIP Facility pursuant to the proposed ARIO:

(a) pursuant to the DIP Agreement, it is a condition to each Subsequent Advance that this Court grant the ARIO authorizing Xplore Inc. and Xplore Fibre L.P. to borrow up to the Facility Amount and increasing the DIP Charge accordingly;[28]

[26] Aziz Affidavit at para. 21 [A41]; Initial Aziz Affidavit at paras. 29 and 176 [A69,A126].
[27] Initial Order Factum at paras. 59-69.
[28] Aziz Affidavt at para. 24 [A42].

(b) the Cash Flow Forecast shows that the Xplore Group requires continued access to the DIP Facility to provide the Company with the necessary liquidity to continue operating the Business in the ordinary course and pursue value-maximizing strategic alternatives during the CCAA proceedings;[29] and

(c) the parties with PPSA registrations against Xplore Entities that will be primed by the DIP Charge (and other Charges) were served with the Motion Record for the Comeback Hearing.[30]

36. The Supreme Court of Canada has held that, *inter alia*, (a) courts supervising a CCAA reorganization have the authority to order super-priority charges that have priority over all other claims, including claims protected by deemed trusts, and (b) "case after case has shown that the priming of the DIP facility is a key aspect of the debtor's ability to attempt a workout."[31] The increase to the size of the DIP charge is necessary to provide the Xplore Group with the liquidity it needs to fund these CCAA proceedings and its pursuit of potential recapitalization, refinancing, restructuring, sale or other value-maximizing transaction.

37. In granting a DIP Charge, the Court is to consider the reasonableness of the DIP financing terms, including the associated fees. In *Canwest Publishing*, Justice Pepall (as she then was) noted that the concurrence of secured creditors that did not elect to participate in the DIP financing is an indicator of the appropriateness of the terms of the DIP financing.[32]

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[29] Aziz Affidavit at paras. 21 and 28 [A41, A43]; First Report at para. 45 [E14].
[30] *Axell Certificate of Service*.
[31] *Canada v. Canada North Group Inc*., 2021 SCC 30, [2021] 2 S.C.R. 571 at paras. 4, 29 and 31; *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R.271 at paras. 59 and 60; *Atlas Global Brands Inc.*, 2024 ONSC 5570 at paras. 84 and 97.
[32] *Canwest Publishing Inc*, 2010 ONSC 222 at para. 45

38. The Company submits that the DIP Fees payable under the DIP Agreement are reasonable in the circumstances as:

(a) the DIP Fees were negotiated through a competitive process in which the Company, with the assistance of PWP, solicited CCAA financing proposals from both Stonepeak and the Lender Committee, and the Xplore Group Independent Committees ultimately determined the DIP Facility to be the superior option;[33]

(b) the Commitment Fee and the Backstop Fee are paid in kind, and the Exit Fee is payable only upon the earlier of the completion of a Restructuring Transaction and repayment in full of the DIP Facility, such that none of these fees reduces the liquidity available to the Xplore Group during these proceedings, and the Consent Fee is not secured by the DIP Charge; [34]

(c) there is no lower-cost DIP financing available to the Company at this time;

(d) all lenders under the 2024 Credit Agreement have the opportunity to participate *pro rata* in the DIP Facility and to earn a *pro rata* share of the Commitment Fee and the Exit Fee;

(e) the Backstop Fee is payable to Backstop Lenders in recognition of their commitment to provide the full Facility Amount to the Company even if other secured lenders elect not to participate in the DIP Facility, which backstop is essential to provide certainty to the Company and its stakeholders regarding the availability of DIP financing; and

[33] Initial Aziz Affidavit at paras. 169-171 [A117-A118];
[34] Initial Aziz Affidavit at para. 173 [A118]; Pre-Filing Report at para. 33(f) [E36].

(f) the Monitor reviewed 26 precedent North American DIP financings of comparable size from 2023 to 2026 and concluded that, while the Exit Fee, Commitment Fee and Backstop Fee are above the median, they are well within the range of fees observed in those precedent transactions.[35]

39. The Monitor is of the view that the proposed increases to the maximum amount available under the DIP Agreement and the amount of the DIP Charge is appropriate in the circumstances.[36]

(iii) The Administration Charge Should be Increased

40. The Initial Order granted the Administration Charge in an initial amount of $1.5 million to secure the fees and expenses of the Monitor, counsel to the Monitor, and Canadian and U.S. counsel to the Xplore Group for the Initial Stay Period. The Xplore Group now seeks to increase the Administration Charge to $5.5 million in light of the significant level of activity anticipated for the beneficiaries of the Administration Charge during peak periods of the CCAA proceedings.

41. In the Initial Order Factum, the Company addressed the Court's jurisdiction to grant the Administration Charge under section 11.52 of the CCAA and various factors established by caselaw for Courts to consider.[37] For the same reasons as detailed in the Initial Order Factum, including the size and complexity of the Business and that the Xplore Group requires the continued commitment of the professionals who are beneficiaries under the Administration Charge, the Applicants submit that it is appropriate for this Court to exercise its jurisdiction and grant the requested increase to the Administration Charge. The Xplore Group worked with the Monitor to appropriately size the proposed Administration Charge and the Monitor supports its approval. [38]

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[35] Pre-Filing Report at para. 51 [E42].
[36] First Report at paras. 34 and 74 [E12, E19].
[37] Initial Order Factum, at paras. 72 and 74.
[38] Pre-Filing Report at para. 56 [E43]; First Report at paras. 19 and 74 [E8,E19].

(iv) The Directors' Charge Should be Increased

42. The Initial Order granted the Directors' Charge in an initial amount of $10 million to secure the Xplore Group's indemnification obligations pursuant to the Initial Order for director and officer liabilities that may be incurred after the commencement of these CCAA proceedings, which amount was intended for the Initial Stay Period only. The Xplore Group now seeks to increase and bifurcate the Directors' Charge into the Priority Directors' Charge, in the maximum amount of $15 million, and the Non-Priority Directors' Charge, in the maximum amount of $45 million, which will rank subordinate to all other Charges.

43. The bifurcated structure is designed to address a worst-case scenario while limiting the impact on the other Charges. The Priority Directors' Charge, limited to $15 million, addresses exposure arising in the ordinary course during the extended Stay Period, including as a result of payroll timing and the Company's anticipated shift to a net HST payable position during the CCAA proceedings. The Non-Priority Directors' Charge protects against potential CLC exposure in the unanticipated event that significant terminations become necessary, and ranks behind all other Charges, including the DIP Charge.[39]

44. This Court has approved directors' charges that contemplate liabilities of directors and officers for termination and severance pay, including in circumstances where a debtor company is governed by the CLC.[40]

45. As referenced in the Initial Order Factum, the Court has jurisdiction under section 11.51 of the CCAA to grant the Directors' Charge. For the same reasons as set out in the Initial Order Factum, the Applicants submit that it is appropriate, having regard to the considerations established

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[39] Aziz Affidavit at paras. 48-49 [A49]; Pre-Filing Report at para. 63 [E45]; First Report at para. 23 [E9].
[40] *YRC Freight Canada Company (Re)*, 2023 ONSC 4834 at paras. 40 and 41; *Timminco Limited (Re)*, 2012 ONSC 106 at para. 36.

by caselaw, for this Court to exercise its jurisdiction and grant the requested increase to the Directors' Charge.[41] In particular:

(a) notice has been given to the Xplore Group's secured creditors who are likely to be affected by the charge;

(b) the D&O Policies are subject to exclusions, limitations and potential exhaustion and may be insufficient to satisfy in full any potential director obligations. The Directors and Officers benefit from the Directors' Charge only to the extent they do not have coverage under the D&O Policies;[42]

(c) the Directors and Officers seek certainty regarding their potential personal liability, and their continued service is required as the Xplore Group advances these CCAA proceedings;[43]

(d) the Monitor assisted in sizing the increase, having regard to the timing of hourly and salaried pay periods, the expected shift to a net HST payable position, and potential contingent termination and severance exposure under the CLC;[44] and

(e) the Xplore Group's indemnification obligation secured by the Directors' Charge does not apply to any obligations incurred as a result of gross negligence or wilful misconduct.[45]

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[41] Initial Order Factum, at paras. 75 and 77.
[42] Aziz Affidavit at para. 51 [A50]; Pre-Filing Report at para. 64 [E45].
[43] Aziz Affidavit at para. 52 [A50]; Initial Aziz Affidavit at paras. 193-194 [A134-A135].
[44] Initial Aziz Affidavit at para. 194 [A135]; Pre-Filing Report at paras. 62-63 [E45]; First Report at paras. 21 and 23 [E9].
[45] Pre-Filing Report at para. 65 [E46]; CCAA, s. 11.51(4).

46. In light of the potential liability the Directors and Officers in certain circumstances, the potential insufficiency of available insurance, and the need for the continued service of the Directors and Officers in these CCAA proceedings, the Applicants respectfully submit that it is appropriate for the Court to increase and bifurcate the Directors' Charge as requested.

(v) The KERP and KERP Charge Should be Approved

47. This Court has approved employee retention plans and charges in numerous proceedings.[46] Factors generally considered by the Court include whether: (a) the Monitor approves of the KERP; (b) the beneficiaries of the KERP would consider other employment opportunities if the charge were not approved; (c) the beneficiaries of the KERP are crucial to the successful restructuring of the debtor company; (d) a replacement could be found in a timely manner; (e) the board of directors exercised its business judgment in developing the KERP; and (f) the KERP is supported or consented to by secured creditors of the debtor. [47]

48. The Court in *Aralez* reflected on the existing factors established by caselaw and set out three considerations which provide a framework for courts to consider the objective business judgment underlying a proposed KERP: (a) the arm's length input, including from the Monitor, into the design, scope and implementation; (b) the necessity on a case-by-case basis of the retention program; and (c) whether the program's design reasonably relates to the goals pursued, which goals must be of demonstrable benefit to the objectives of the restructuring process. [48]

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[46] *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347 at paras. 13 and 17 [*Bridging Finance*]; *Just Energy Group Inc. et al.*, 2021 ONSC 7630 at paras. 7-25 [*Just Energy*]; and *Target Canada Co., Re*, 2015 ONSC 303 at para. 59 [*Target*].
[47] *Aralez Pharmaceuticals Inc. (Re)*, 2018 ONSC 6980, at para. 29 [*Aralez*]; *Just Energy*, at para. 7; and *Re Cinram International Inc.*, 2012 ONSC 3767 at para. 37 and Sch. C at para. 91.
[48] *Aralez*, *supra* at para. 30.

49. The Applicants submit that the KERP complies with the factors set out above and is consistent with KERP arrangements that have been approved by CCAA courts. In particular:

(a) the development of the KERP was overseen by the Xplore Group Independent Committees, with input from the Company's legal advisors and senior leadership team, and the KERP reflects feedback from Stonepeak and the Lender Committee, who have agreed to its terms. The Monitor was also involved in the KERP's development and supports it;

(b) the KERP is designed to encourage the KERP Recipients to continue their employment during a critical period for the Company. The KERP Recipients have significant knowledge and responsibility with respect to the Xplore Group and its operations, played a critical role in preparing for these proceedings, and will be instrumental in pursuing value-maximizing alternatives. Key employees departed during the period of uncertainty surrounding the 2024 Recapitalization Transaction and, given that the Company operates a complex business in a specialized industry, there is no reasonable prospect of adequately replacing the KERP Recipients in the timeframes required by these proceedings and the DIP financing;

(c) the KERP is targeted at executive-level employees or senior employees in functional areas that are of significant importance to the Company as it navigates the CCAA proceedings;

(d) the instalment structure of the KERP is structured to achieve the retention of the KERP Participants during the CCAA proceedings and through to the completion of a material transaction in respect of the Company; and

(e) the Company believes the KERP strikes an appropriate balance between retaining a targeted group of key senior employees and managing costs in light of its financial situation.[49]

50. The KERP Charge is necessary to provide the KERP Recipients with assurance that the Retention Payments will be made and is a Permitted Priority Lien under the DIP Agreement. Accordingly, the Applicants respectfully submit that the KERP should be approved and the KERP Charge granted.

(vi) The PWP Engagement and Financial Advisor Charge Should be Approved

51. The Applicants seek approval of the PWP engagement, authorization to pay the amounts due under the PWP Engagement Letter, and the Financial Advisor Charge.

52. Section 11 of the CCAA provides the Court with authority to allow debtor companies to enter into arrangements to facilitate a restructuring, which may include the retention of expert advisors where necessary to help with the debtor company's restructuring efforts.[50] Further, section 11.52 of the CCAA specifically authorizes the granting of a priority charge to secure the fees and expenses of a financial expert engaged by a company.

53. Courts have approved the appointment of advisors in restructuring proceedings, and corresponding charges to secure such advisors' professional fees (including success-based fees), where such advisors' knowledge and experience is critical to assisting the debtor company with a successful restructuring or is necessary to assist the debtor with a sale.[51]

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[49] Aziz Affidavit at paras. 43-47 [A48-A49].
[50] *Victorian Order of Nurses for Canada (Re)*, 2015 ONSC 7371 at para. 27.
[51] *Payless ShoeSource Canada Inc and Payless ShoeSource Canada GP Inc (Re)*, 2019 ONSC 1215 at paras. 30-32; *Target* at para. 72; *Tacora Resources Inc. (Re)*, 2023 ONSC 6126, at para. 158(b) [*Tacora*].

54. The Applicants submit that approval of the PWP Engagement Letter and the Financial Advisor Charge is appropriate in the circumstances given, among other things:

(a) PWP has a deep understanding of the Xplore Group, its capital structure and its stakeholders, having advised the Company in connection with the 2024 Recapitalization Transaction and assisted in negotiations with Stonepeak and the Lender Committee with respect to out-of-court and in-court financing proposals. PWP has been key to the development and advancement of the Company's strategic review process to date and will continue to have an important role as that process continues within these CCAA proceedings;[52]

(b) the negotiation of the PWP Engagement Letter was overseen by the Xplore Group Independent Committees, and its fees were negotiated having regard to the Company's specific needs and circumstances;[53]

(c) the PWP Engagement Letter contains fee-crediting mechanisms and a reduced Financing Fee for DIP financing provided by Stonepeak and the Lender Committee, and specifies a number of "Excluded Transactions", all of which manage the overall fees payable;[54]

(d) Stonepeak and the Lender Committee have reviewed the unredacted PWP Engagement Letter and support the engagement of PWP and the Financial Advisor Charge;[55] and

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[52] Initial Aziz Affidavit at paras. 12(b), 152 and 170 [A64, A111, A117]; Aziz Affidavit at paras. 31 and 37 [A44, A46].
[53] Aziz Affidavit at para. 34 [A45].
[54] Aziz Affidavit at paras. 33-34 [A44-A45].
[55] Aziz Affidavit at para. 36 [A46].

(e) the Monitor supports approval of the PWP Engagement Letter and is of the view that the amounts payable under the PWP Engagement Letter are within market parameters.[56]

55. In the circumstances, the Applicants respectfully submit that the approval of the PWP Engagement Letter and the granting of the Financial Advisor Charge to secure payment of the fees and other amounts payable thereunder is appropriate.

(vii) The Confidential Supplement Should be Sealed

56. The Applicants request that this Court seal the Confidential Supplement containing (a) the unredacted PWP Engagement Letter, and (b) the listing of KERP Recipients and their Retention Payments. This Court has the discretion pursuant to subsection 137(2) of the *Courts of Justice Act*[57] and its inherent jurisdiction to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.

57. In *Sherman Estate v. Donovan*, the Supreme Court of Canada held that the person asking a court to exercise discretion in a way that limits the open court presumption must establish that: (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.[58]

58. The Applicants respectfully submit that the foregoing test is satisfied. The confidential KERP listing contains the names and personal compensation information of the KERP Recipients,

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[56] First Report at paras. 53 and 54 [E15].
[57] R.S.O. 1990, c. C.43.
[58] *Sherman Estate v. Donovan*, 2021 SCC 25 at paras. 37 and 38.

including the proposed Retention Payment for each. Protecting the sensitive and personal compensation information of employees is an important public interest that should be protected. The KERP Recipients have a reasonable expectation that their names and compensation information will be kept confidential, and their KERP letter agreements contain confidentiality obligations. Disclosure of the KERP Recipients and the Retention Payments could also harm the commercial interests of the Xplore Group and its ability to continue to retain such employees, as that information may be of strategic advantage to competitors and could give rise to retention issues, including among employees who are not KERP participants.[59]

59. The redacted fee information in the PWP Engagement Letter, being the amounts payable on account of the Financing Fee and the Completion Fee, is commercially sensitive. Its disclosure could undermine the efficacy and competitiveness of the SISP by allowing prospective bidders to draw inferences about the Company's view of value from the quantum or structure of those fees, rather than forming their own views based on their diligence. Disclosure could also prejudice PWP by giving its competitors information about its fee arrangements.[60]

60. Finally, as a matter of proportionality, the benefits of sealing outweigh any negative effects. The relief sought is narrowly tailored: the maximum aggregate cost and the payment structure of the KERP have been publicly disclosed, and the PWP Engagement Letter has been filed in redacted form, disclosing the Monthly Fee and the structure of the Financing Fee and Completion Fee.

61. Courts have previously granted sealing orders in respect of individual compensation information relating to key employee retention plans and commercially sensitive financial advisor

[59] Aziz Affidavit at paras. 64-65 [A53-A54].
[60] Aziz Affidavit at paras. 67-68 [A54].

fee terms, including where the disclosure could potentially influence the structure of bids received in the sales process.[61]

B. CONCLUSION

62. For the foregoing reasons, the Xplore Group respectfully requests that the Court grant the ARIO in the form requested.

ALL OF WHICH IS RESPECTFULLY SUBMITTED November 17, 2026.

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[61] *Bridging Finance*, at paras. 23-28; *Just Energy*, at paras. 26-29; *Tacora*, at para. 160, 161; *Target* at paras. 83 and 85; *Re Nunavut Iron Ore* (27 August 2026), Toronto, Ont Sup Ct J [Commercial List] CL-26-00000219-0000 (Endorsement of Steele J) at para. 8.

SCHEDULE A

LIST OF AUTHORITIES

1. *Xplore Inc. et al,* Initial Order issued November 10, 2026 [Court File No. CL-26-00000484-0000]
2. *Canada v. Canada North Group Inc.*, 2021 SCC 30, [2021] 2 S.C.R. 571
3. *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271
4. *Atlas Global Brands Inc.*, 2024 ONSC 5570
5. *Canwest Publishing Inc.*, 2010 ONSC 222
6. *YRC Freight Canada Company (Re)*, 2023 ONSC 4834
7. *Timminco Limited (Re)*, 2012 ONSC 106
8. *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347
9. *Just Energy Group Inc. et al.*, 2021 ONSC 7630
10. *Target Canada Co., Re*, 2015 ONSC 303
11. *Aralez Pharmaceuticals Inc. (Re)*, 2018 ONSC 6980
12. *Re Cinram International Inc.*, 2012 ONSC 3767
13. *Victorian Order of Nurses for Canada (Re)*, 2015 ONSC 7371
14. *Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. (Re)*, 2019 ONSC 1215
15. *Tacora Resources Inc. (Re)*, 2023 ONSC 6126
16. *Sherman Estate v. Donovan*, 2021 SCC 25
17. *Re Nunavut Iron Ore* (27 August 2026), Toronto, Ont Sup Ct J [Commercial List] CL-26-00000219-0000 (Endorsement of Steele J)

Lawyer's Statement (Rule 4.06.1(2.1)):

I certify that I am satisfied as to the authenticity of every authority cited in this factum, and I further certify that I am satisfied that any quotations from an authority that appear in this factum accurately reproduce the text of the authority.

Date: November 17, 2026

Erik Axell

Signature

SCHEDULE B

STATUTORY REFERENCES

***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.

Stays, etc. — other than initial application

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

> (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
>
> (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
>
> (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

11.02 (3) The court shall not make the order unless

> (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
>
> (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

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.

Interim Financing – Factors to be considered

11.2 (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.

Security or charge relating to director's indemnification

11.51 (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, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority

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

Restriction

11.51 (3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

11.51 (4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

> (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
>
> (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
>
> (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

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

Courts of Justice Act R.S.O. 1990, c. C.43

Sealing documents

137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

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 XPLORE INC. ET AL.

Court File No. CL-26-00000484-0000

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

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(Motion for ARIO)
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