Court File No.: CV-20-00649558-00CL

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 WITH RESPECT TO EXPRESS GOLD REFINING LTD.

FACTUM OF THE MONITOR
(returnable December 4, 2023)

November 10, 2023

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PART I - OVERVIEW

1. The Monitor seeks an order requiring Express Gold Refining Ltd. ("**EGR**") and Canada Revenue Agency ("**CRA**") to submit to a mediation process, so that they may have an opportunity, with the help of an experienced and respected neutral mediator, to resolve a dispute that is currently pending in the Tax Court of Canada. That dispute, relating to a GST/HST reassessment of nearly $190 million, was the catalyst for EGR's *Companies' Creditors Arrangement Act* ("**CCAA**") filing in 2020, in respect of which Deloitte Restructuring Inc. has been appointed and has acted as Monitor throughout.

2. It is well established that this Court has jurisdiction[1] to compel CCAA debtors and creditors to submit to a mediation process that does not result in an adjudicated outcome on the merits of a claim but rather a negotiated and voluntary settlement. The reason why this Court has made such orders in the past is self-evident – mediation is a tried and tested alternative to traditional forms of court proceedings. Mediation allows the parties to engage in frank discussions that the court process does not. While there is no guarantee a settlement will be achieved, it is reasonable to expect that a skilled mediator will help the parties bridge gaps, narrow issues in the tax litigation and also facilitate the parties towards the goal of "getting to yes".

3. The case at bar cries out for mediation:

(a) the CCAA process is now in its fourth year. To date, the parties have not participated in any form of alternative dispute resolution procedure. CRA

[1] The proposed order would not interfere with the Tax Court's jurisdiction to adjudicate the pending dispute on its merits. It may even be assumed for the purposes of this motion only that the Tax Court has such jurisdiction, on an exclusive basis.

remains by far EGR's largest, albeit contingent, creditor. In the Monitor's view, the CCAA Proceedings cannot be concluded without a resolution of the tax dispute;

(b) encouragingly, on March 31, 2023, CRA and EGR jointly wrote to the Tax Court requesting a settlement conference to be held on July 20, 2023. Both parties agreed then "*that a settlement conference would be beneficial*". The parties' request came following EGR's written offer to settle and CRA's written rejection. Regrettably, the Tax Court declined to convene one;

(c) On June 12, 2023, after being briefed on these developments, this Court issued an endorsement directing the Monitor to take steps to host discussions with CRA and EGR in relation to developing an alternative dispute resolution procedure. EGR has at all times expressed its support to participate in such a process. By contrast, CRA advised on July 7, 2023, that it "[was] not prepared to discuss settlement of the tax litigation at this time" [emphasis added];

(d) the tax litigation has been ongoing for many years, and has cost the parties millions in legal fees. Yet, there is no clear path forward, except a three to four month, 60+ witness trial with an as-of-yet unassigned trial date and no known end date, all which is expected to cost even more millions of dollars. Given the stakes, an appeal is a virtual certainty, adding another one to two years to the litigation;

(e) CRA is not the sole stakeholder in these CCAA Proceedings – aside from CRA, EGR has over 100 additional creditors with aggregate claims of nearly $40 million;

(f) the discovery process in the tax litigation is complete – there is no information deficit or imbalance. The parties know the issues well;

(g) the uncertainty created by CRA's contingent creditor status is having a significant impact on EGR's financial viability; and

(h) the resolution (or determination) of the claims arising from the tax litigation is a necessary pre-requisite to, and component of, any viable plan and / or exit from these CCAA Proceedings.

PART II - THE FACTS

A. Background

4. EGR's business relates to gold refining, which consists of EGR purchasing unrefined bars and scrap gold for refining at its specialized facility in Toronto and arranging for the final stages of refining to be conducted by third-party refiners offsite. EGR also engages in the trading of gold bullion (and other precious metals) and forward contracts, and takes trading positions on its own behalf and for its clients based on short and long-term fluctuations in the price of gold and other precious metals, either for hedging purposes or for investment purposes.[2]

5. As a GST/HST registrant under Part IX of the *Excise Tax Act* (R.S.C., 1985, c. E-15), EGR pays GST/HST on unrefined gold purchased from its suppliers, but does not collect GST/HST on the refined gold sold to its customers (pure gold is zero rated). GST/HST paid to suppliers in a business transaction give rise to Input Tax Credits ("**ITCs**") that EGR may claim. When a registrant's ITCs exceed the GST/HST collected, it is entitled to a net tax refund from the CRA.[3]

[2] Sixteenth Report of the Monitor dated September 22, 2023 (the "**Sixteenth Report**"), at para. 6.
[3] Sixteenth Report, at para. 7.

6. On July 29, 2020, CRA issued Notices of Reassessment related to EGR's June 1, 2016 to October 31, 2018 reporting periods, imposing tax, penalties and interest in excess of $189.5 million. CRA further advised EGR that it intended to take enforcement actions notwithstanding EGR's contestation.[4]

7. On October 15, 2020, EGR sought and obtained creditor protection under the CCAA to provide for the continued operation of the business, stay the enforcement actions commenced by CRA, and to create breathing room while EGR pursued its appeal from the reassessments in the Tax Court.[5]

8. On June 8, 2021, following a contested motion between the CRA and the Monitor, this Court ordered CRA to grant to the Monitor access to the documents that CRA had produced in the tax litigation.[6]

9. Through its review of the documentary disclosure and discovery transcripts, the Monitor is familiar with the matters in dispute in the tax litigation. Through its monitoring of the business and cash-flows of EGR, the Monitor is also familiar with EGR's financial circumstance.[7]

10. On February 7, 2023, EGR met with CRA and its counsel at the Department of Justice Canada ("**DOJ**"), to discuss the prospect of a settlement conference.

11. On February 23, 2023, EGR served a written offer to settle the tax litigation. The Monitor understands that, on March 10, 2023, CRA rejected EGR's offer.

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[4] Sixteenth Report, at para. 9.
[5] Sixteenth Report, at para. 10.
[6] Sixteenth Report, at paras. 14-15.
[7] Sixteenth Report, at para. 15.

12. On March 31, 2023, CRA and EGR jointly wrote to the Tax Court requesting that a settlement conference be scheduled for July 20, 2023. The parties jointly represented to the Tax Court "*a settlement conference would be beneficial*". Unfortunately, on May 29, 2023, the Tax Court rejected the parties' request.[8]

B. Justice McEwen's Direction

13. On June 12, 2023, upon hearing of these developments, Justice McEwen issued an endorsement directing the Monitor to take steps to host discussions with CRA/DOJ and EGR with a view to developing an alternative dispute resolution procedure to facilitate the resolution of the tax litigation.[9]

14. Following that endorsement, the Monitor held various discussions with EGR and CRA/DOJ regarding alternative dispute resolution procedures.[10]

15. EGR has and continues to express to the Monitor a strong interest in exploring and participating in an alternative dispute resolution procedure.[11]

16. On June 29, 2023, the Monitor wrote to DOJ requesting a discussion about potential alternative dispute resolution procedures given CRA's prior indication of its willingness to participate in a settlement conference, and the ensuing direction of Justice McEwen.[12]

17. On July 7, 2023, DOJ advised the Monitor that CRA "is not prepared to discuss settlement of the tax litigation at this time".[13]

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[8] Sixteenth Report, at para. 17.
[9] Sixteenth Report, at para. 24.
[10] Sixteenth Report, at para. 25.
[11] Sixteenth Report, at para. 26.
[12] Sixteenth Report, at para. 27.

C. Cost Consideration of the Tax litigation

18. EGR has been able to fund the costs of the tax litigation and the CCAA Proceedings (nearly $11 million as at August 18, 2023). The Monitor is concerned, however, that this burden and the burden of conducting business in the CCAA Proceeding will wear on EGR's capacity to continue to fund the tax litigation on an indefinite basis.[14]

19. EGR's tax counsel has advised the Monitor that CRA has requested a 65-day trial, with a 90-day break before closing arguments. In contrast, EGR has requested a four-week trial. According to tax counsel's estimates, the EGR's legal costs for a 65-day Tax Court trial would range from $6.5 million to $7.5 million compared to a range of $2.0 million to $2.5 million for a 4-week trial. EGR's cash balance as at August 21, 2023 was $2.1 million, which makes it difficult for the company to fund a protracted trial, while continuing to meet the concurrent pressures of the CCAA Proceedings.[15]

D. Proposed Mediation Procedure

20. The objective of the proposed mediation is to facilitate a global resolution of the tax litigation and all related current and potential tax disputes or claims between EGR and CRA; or, should a global resolution not be achieved, a narrowing of the issues and timeframes for trial.

21. The mediation process would be without prejudice to any party, privileged, confidential, and non-binding so as to encourage a candid and fulsome discussion of all elements of the tax dispute. Nothing in the mediation process will affect the continuation of

[13] Sixteenth Report, at para. 28.
[14] Sixteenth Report, at para. 21.
[15] Sixteenth Report, at para. 22.

the tax litigation should a settlement not be reached. If no settlement emerges from the mediation process, EGR and CRA are in substantially the same position they presently find themselves in.

22. The proposed mediation Order (the "**Mediation Order**") includes the following:

(a) paragraph 3 - the parties' participation in the mediation process is mandatory;

(b) paragraph 4 - the parties shall participate in the mediation process in good faith and provide such reasonable cooperation to each other and the mediator as may be necessary or desirable to achieve a resolution of the tax litigation;

(c) paragraph 5 - the mediator shall adopt processes, procedures, and timelines which he, in his discretion, considers appropriate to facilitate an effective and efficient mediation process consistent with the purposes of the CCAA Proceedings;

(d) paragraph 7 - the Monitor shall provide the mediator with such assistance as the mediator shall reasonably request;

(e) paragraph 11 - the mediation process shall be subject to the Confidentiality Protocol (as defined in the Mediation Order);

(f) paragraph 13 - the mediation process shall terminate on the earlier of: (i) a declaration of the mediator that a resolution of the tax litigation has been concluded, or that a resolution of the tax litigation issues is not achievable; and (ii) any further Order of this Court; and

(g) paragraphs 14 and 15 - EGR will pay the reasonable fees and disbursements of the mediator on a monthly basis and the mediator will be entitled to the benefit of the administration charge as security for the mediator's fees and disbursements.

PART III - THE LAW AND ARGUMENT

A. Jurisdiction

23. This motion falls to be decided in the broader context of the CCAA, the remedial purpose of which is well known. In *U.S. Steel*, the Ontario Court of Appeal described it as follows:

> There is no dispute about the purpose of the CCAA. It describes itself as "An Act to facilitate compromises and arrangements between companies and their creditors". Its purpose is to avoid the devastating social and economic effects of commercial bankruptcies. [16]

24. In furtherance of this overriding goal, the Monitor is recommending to this Court to impose a *procedure* in these CCAA Proceedings requiring a debtor and its largest contingent creditor to engage in settlement negotiations, with the assistance of a seasoned neutral. The Monitor is not suggesting that this Court deal in any way with the *substantive* issues raised in the tax litigation. The Monitor is mindful of the fact that the tax litigation is before the Tax Court.

25. In *Ordon Estate v. Grail*,[17] the Supreme Court of Canada contrasted the jurisdiction of the Superior Courts and Federal Courts as follows:

[16] *U.S. Steel Canada Inc. (Re)*, 2016 ONCA 662, at para. 47 ("***U.S. Steel***")
[17] *Ordon Estate v. Grail*, [1998] 3 SCR 437

> [44] It is well settled, and the defendants do not dispute, that as a general rule provincial superior courts have plenary and inherent jurisdiction to hear and decide all cases that come before them, regardless of whether the law applicable to a particular case is provincial, federal or constitutional […]
>
> [46] As a statutory court, the Federal Court of Canada has no jurisdiction except that assigned to it by statute. In light of the inherent general jurisdiction of the provincial superior courts, Parliament must use express statutory language where it intends to assign jurisdiction to the Federal Court. In particular, it is well established that the complete ouster of jurisdiction from the provincial superior courts in favour of vesting exclusive jurisdiction in a statutory court (rather than simply concurrent jurisdiction with the superior courts) requires clear and explicit statutory wording to this effect.[18]

26. In *Canada v Canada North Group*, Justice Côté described the interplay between the CCAA and other statutes as follows:

> [31] [...] [C]ourts have ensured that the *CCAA* is given a liberal construction to fulfill its broad purpose and to prevent this purpose from being neutralized by other statutes: [TRANSLATION] "As the courts have ruled time and again, the purpose of the *CCAA* and orders made under it cannot be affected or neutralized by another [Act], whether of public order or not" (*Triton Électronique inc. (Arrangement relatif à*), 2009 QCCS 1202, at para. 35 (CanLII)).[19]

27. Neither the *Excise Tax Act* nor the *Tax Court of Canada Act* includes language sufficient to displace this Court's jurisdiction to give effect to the remedial purposes of the CCAA through a mediation procedure. By virtue of both its inherent jurisdiction and the express provisions of the CCAA, this Court has jurisdiction to compel CRA to participate in the proposed mediation, notwithstanding the ongoing tax litigation in the Tax Court where the Tax Court will hear and dispose of the *substance* of the appeal. As noted by Fitzpatrick J. in *105 BC* as it relates to mediation orders, "*there is no dispute that this Court has the jurisdiction to grant the Mediation Order under its broad statutory jurisdiction under the CCAA*"[20].

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[18] *Ibid*., at paras. 44-46.
[19] *Canada v Canada North Group Inc*., 2021 SCC 30 at paras. 21, 31 per Côté J. (Wagner C.J. and Kasirer J. concurring) ("***Canada North***").
[20] *1057863 B.C. LTD (Re)*, 2022 BCSC 759, at para. 44. ("***105 BC***").

28. Section 11 of the CCAA has been interpreted broadly, including "*to sanction measures for which there is no explicit authority in the CCAA*".[21] This Court's jurisdiction under section 11 is "*only constrained by the restrictions set out in the CCAA itself*",[22] and the requirement that the order made be "*appropriate in the circumstances*".[23]

29. The Court's authority to grant a discretionary order under section 11 is "*vast but not unlimited*".[24] The moving party must satisfy the Court that the requested order is in furtherance of the remedial objectives of the CCAA and that the three following baseline considerations are met: (i) that the order sought is *appropriate* in the circumstances, and (ii) that the applicant has been acting in good faith and (iii) with due diligence.[25]

30. "Appropriateness" is assessed by enquiring whether the order sought advances the policy objectives underlying the CCAA. Specifically:

> The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA — avoiding the social and economic losses resulting from the liquidation of an insolvent company. [...] [A]ppropriateness extends not only to the purpose of the order, but also the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.[26]

31. Why the proposed mediation would be appropriate is set out further below. The Monitor is satisfied that EGR is acting in good faith and with due diligence.[27]

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[21] *9354-9186 Québec Inc. v Callidus Capital Corp.*, 2020 SCC 10, at paras. 65, 67 ("***Callidus***"), citing *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60, at paras. 61-62 ("***Century Services***").
[22] *Ibid*.
[23] *105 BC*, at para. 49.
[24] *105 BC*, at para. 51.
[25] *Callidus*, at paras. 49-50, 70, citing *Century Services*, at paras. 59, 69-70; *105 BC*, at para. 51.
[26] *Century Services*, at para. 70.
[27] Fifteenth Report of the Monitor dated September 6, 2023, at para. 37.

32. It is well established that this Court has jurisdiction, under s. 11 of the CCAA, to impose a mandatory mediation process, even in the face of an objecting stakeholder or ongoing litigation in another court.[28]

33. The broad jurisdiction granted under s. 11 of the CCAA has been utilized to approve mediation orders in various cases in Ontario and elsewhere in Canada. These orders share a number of commonalities with the proposed Mediation Order, including: (i) the appointment of an experienced mediator to assist with the resolution of the claims at issue; (ii) the establishment of confidentiality and privilege provisions to ensure parties may freely negotiate in private, without fear that their negotiating positions will be used against them if negotiations ultimately fail; (iii) significant flexibility granted to the court-appointed mediator to determine their own process, including the ability to retain counsel and other advisors as may be deemed necessary; and, (iv) the authority for the mediator to consult with creditors, the court-appointed monitor, and other stakeholders, to facilitate a settlement of the matters at issue[29].

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[28] *1057863 B.C. LTD (Re)*, 2022 BCSC 759, at paras. 44-45 ("***105 BC***").

[29] ***Canadian Red Cross Society / Société Canadienne de la Croix Rouge, Re***, 19 CBR (4th) 158, 2000 CanLII 22488 (ONSC) at para. 9; ***Nortel Networks Corporation (Re)***, 2011 ONSC 4012 at paras. 18-25; *In the Matter of A Plan of Compromise or Arrangement of* ***Laurentian University of Sudbury***, ONSC (Comm. List) File No. CV-21-00656040-00CL, Order (Re: Appointment of Mediator), granted on February 5, 2021 by the Hon. Morawetz J.; *In the Matter of A Plan of Compromise or Arrangement of* ***CannTrust Holdings Inc****. et al*, ONSC (Comm. List) File No. CV-20-00638930-00CL, Mediation Order, granted on May 8, 2020 by the Hon. Hainey J.; *In the Matter of A Plan of Compromise or Arrangement of* ***Rothmans, Benson & Hedges Inc****.*, ONSC (Comm. List) File No. CV-19-616779-00CL, Second Amended and Restated Initial Order, granted on April 25, 2019, by the Hon. McEwen J. In the Matter of A Plan of Compromise or Arrangement of **JTI-Macdonald Corp**., ONSC (Comm. List) File No. CV-19-615862-00CL, Second Amended and Restated Initial Order, granted on March 8, 2019, by the Hon. McEwen J.*;* ***1057863 B.C. LTD (Re),*** 2022 BCSC 759.

B. Mediation furthers remedial purpose of CCAA

34. There is no question that Court-ordered mediation falls squarely within the remedial purposes of the CCAA. In *U.S. Steel*, the Ontario Court of Appeal also held that a core remedial objective of the CCAA is to "*preserve the status quo while 'attempts are made to find common ground amongst stakeholders for a reorganization that is fair to all*".[30] Similarly, in *105 BC*, the British Columbia Supreme Court held that "*[i]t has been long recognized by the courts that negotiation and compromise can greatly assist a debtor in taking advantage of the benefits of the CCAA process. Indeed, the stay of proceedings – which allows 'breathing room' for negotiation and compromise – has unquestionably been considered an integral measure toward achieving the remedial purposes of the CCAA*".[31]

35. In *105 BC*, the CCAA debtor (hereinafter, "**105**"), who operated a pulp mill in Nova Scotia, filed for CCAA protection following the introduction of legislation by the Nova Scotia government which restricted 105's ability to carry on business. 105's debt was in excess of $300 million and Nova Scotia was noted to be a significant creditor, both secured and unsecured". 105's claim against Nova Scotia was one of its key assets, the resolution of which was essential (if not a precondition) to the petitioners' potential emergence from CCAA.[32]

[30] *U.S. Steel*, at para. 49, citing *Century Services*, at para. 77; see also *105 BC*, at para. 53.
[31] *105 BC*, at para. 53.
[32] *105 BC*, at paras. 1-18.

36. 105 sought an order imposing a mediation process among 105 and Nova Scotia. Nova Scotia strongly opposed the relief on grounds which are not dissimilar to CRA's in the present case.[33]

37. Fitzpatrick J. granted the requested mediation order and in doing so held that "*I am not convinced that Nova Scotia's objection to participating in the Mediation should dictate the result on this application*".[34]

38. Regarding the benefits of mandatory mediation, Fitzpatrick J. held as follows:

> 96 In my view, the benefits of a Mediation are manifest. If a settlement is achieved, I accept the position of the Petitioners that such a result will materially enhance their ability to proceed to a successful restructuring.
>
> 97 If no settlement is achieved, there may nevertheless be benefits in the form of a narrowing of the issues between the Petitioners and Nova Scotia. […]
>
> 99 It is also unclear to me what steps in the Mediation might be a duplication of mandatory steps in the Action, or what that cost might be, as stated by Nova Scotia. It strikes me that there is likely to be some overlap, but advancing the matter in the Mediation could also produce materials that can be easily transferred to the Action, if it proceeds at the end of the day. […]
>
> 103 I confess that I am unable to discern any real or material prejudice to Nova Scotia in these circumstances, beyond the payment of some legal costs.[35]

39. These considerations equally weigh in favour of ordering mediation in this case as the requested order is in furtherance of the remedial objectives of the CCAA. As Fitzpatrick J. further noted: "*the responsibility of the Court is to ensure that matters continue in the CCAA proceedings at a reasonable pace, consistent with the need for the Petitioners to act "with due diligence*".[36]

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[33] *105 BC*, at para. 63.
[34] *105 BC*, at para. 91.
[35] *105 BC*, at paras. 96- 97, 99, 103 and 109.
[36] *105 BC*, at para. 82.

40. Morawetz J. in *Nortel Networks Corporation (Re)* similarly held that:

> A protracted delay in the progress of the cases will only exacerbate an already unfortunate situation for the many individual creditors. With extended delay comes uncertainty. For many, uncertainty brings considerable stress and a bad situation becomes even worse. Clearly, the consequences of extended litigation are not desirable.[37]

C. Mediation is Appropriate in the Circumstances

41. As Fitzpatrick J. stated in *105 BC*, the Monitor is not "*required to establish "urgency", only appropriateness*".[38] The following reasons support the conclusion that a mediation procedure is now appropriate:

(a) the tax litigation and these CCAA proceedings are inextricably linked and the conclusion of the latter is unlikely to be achieved without a resolution of the former;

(b) after more than three years of litigation, the parties have not participated in any form of alternative dispute resolution and have previously indicated a willingness to participate in such a process;

(c) CRA is not the sole stakeholder in these CCAA proceedings, with EGR's books and records showing many other creditors with aggregate claims of nearly $40 million (noting that a claims process could uncover additional claims);

(d) the parties have concluded extensive and lengthy documentary and oral discoveries meaning each side has had ample opportunity to know the other's case;

(e) trial dates have not been set, remain uncertain and could spill into 2025;

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[37] *Nortel Networks Corporation (Re)*, 2011 ONSC 4012 at para. 17 ("***Nortel Networks***")
[38] *105 BC*, at para 79.

(f) given the stakes, appeals from any Judgment are also a virtual certainty, which could take the tax litigation into 2026 and beyond; and

(g) EGR's financial ability to fund the tax litigation on an indefinite basis is not certain.[39]

42. The proposed mediation is the best available means of ensuring that "participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit",[40] given the lack of progress in attempts to pursue settlement discussions to date. If it is successful, the mediation process will avoid years of protracted litigation and Court resources, or at minimum, likely result in a more expedient resolution of the tax dispute than would occur if the parties were to continue on this stagnant path to trial. To the extent that the proposed mediation process will affect the rights of third parties, there is a clear jurisdiction to grant the order sought. Specifically to CRA, no prejudice will result from the granting of the Mediation Order as the process does not compromise or impair claims, or any rights at trial, should the mediation process fail.[41]

PART IV - ORDER REQUESTED

43. The Monitor respectfully asks this Honourable Court to grant the Mediation Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of November, 2023.

Dentons Canada LLP

Michael Schafler/Robert Kennedy/Mark Freake
Dentons Canada LLP

Lawyers for Deloitte Restructuring Inc., the Monitor

[39] Sixteenth Report, at para. 20.
[40] *Century Services*, at para. 70; *105 BC* at para. 55.
[41] *Ibid*.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *U.S. Steel Canada Inc. (Re)*, 2016 ONCA 662

2. *Ordon Estate v. Grail*, [1998] 3 SCR 437

3. *Canada v Canada North Group Inc.*, 2021 SCC 30

4. *1057863 B.C. LTD (Re)*, 2022 BCSC 759

5. *9354-9186 Québec Inc. v Callidus Capital Corp.*, 2020 SCC 10

6. *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60

7. *Canadian Red Cross Society / Société Canadienne de la Croix Rouge, Re*, 2000 CanLII 22488 (ON SC)

8. *In the Matter of A Plan of Compromise or Arrangement of Laurentian University of Sudbury*, ONSC (Comm. List) File No. CV-21-00656040-00CL, Order (Re: Appointment of Mediator), granted on February 5, 2021 by the Hon. Morawetz J.

9. *In the Matter of A Plan of Compromise or Arrangement of CannTrust Holdings Inc. et al*, ONSC (Comm. List) File No. CV-20-00638930-00CL, Mediation Order, granted on May 8, 2020 by the Hon. Hainey J.

10. *In the Matter of A Plan of Compromise or Arrangement of Rothmans, Benson & Hedges Inc.*, ONSC (Comm. List) File No. CV-19-616779-00CL, Second Amended and Restated Initial Order, granted on April 25, 2019, by the Hon. McEwen J.

11. *In the Matter of A Plan of Compromise or Arrangement of JTI-Macdonald Corp.*, ONSC (Comm. List) File No. CV-19-615862-00CL, Second Amended and Restated Initial Order, granted on March 8, 2019, by the Hon. McEwen J.

12. *In the Matter of A Plan of Compromise or Arrangement of Imerys Talc Canada Inc.*, ONSC (Comm. List) File No. CV-19-614614-00CL, Recognition of Foreign Order granted on December 22, 2021, by the Hon. Koehnen J.

13. *Nortel Networks Corporation (Re)*, 2011 ONSC 4012

SCHEDULE "B"
RELEVANT STATUTES

***Companies' Creditors Arrangement Act*, RSC 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.

Court File No.: CV-20-00649558-00CL

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 WITH RESPECT TO EXPRESS GOLD REFINING LTD.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

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