

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

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF EXPRESS GOLD REFINING LTD.

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**MOTION RECORD**  
(extension of stay period)  
(returnable June 8, 2021)

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June 3, 2021

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**INDEX**

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<b>Tab</b>	<b>Description</b>	<b>Page</b>
<b>1</b>	Notice of motion returnable June 8, 2021	1
<b>2</b>	Affidavit of Atef Salama sworn June 3, 2021	7
<b>A</b>	Exhibit "A" – Second amended and restated initial order dated October 27, 2020	34
<b>B</b>	Exhibit "B" – Order and endorsement of McEwen J. dated March 8, 2021	50
<b>C</b>	Exhibit "C" – Affidavit of A. Salama sworn December 9, 2020 (without exhibits)	55
<b>D</b>	Exhibit "D" – Affidavit of A. Salama sworn March 3, 2021 (without exhibits)	64
<b>E</b>	Exhibit "E" – Affidavit of A. Salama sworn October 14, 2020 (without exhibits)	72
<b>F</b>	Exhibit "F" – April 23, 2021 letter from Tax Counsel to Department of Justice ("DOJ")	107
<b>G</b>	Exhibit "G" – May 5, 2021 letter from DOJ to Tax Counsel	115
<b>H</b>	Exhibit "H" – Tax litigation case management judge direction	128
<b>I</b>	Exhibit "I" – May 3, 2021 email from Tax Counsel to DOJ	131
<b>J</b>	Exhibit "J" – May 5, 2021 letter from DOJ to Tax Counsel	133
<b>K</b>	Exhibit "K" – March 28, 2019 first access to information request	137
<b>L</b>	Exhibit "L" – April 8, 2019 letter from the Access to Information and Privacy Directorate to Tax Counsel	150
<b>3</b>	Draft order	155

**TAB 1**

Notice of motion returnable June 8, 2021

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 (the "CCAA")

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF EXPRESS GOLD REFINING LTD.  
(the "**Applicant**")

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**NOTICE OF MOTION  
(extension of stay period)  
(returnable June 8, 2021)**

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The Applicant will make a motion to Mr. Justice McEwen of the Commercial List at 330 University Avenue, Toronto, on Tuesday, June 8, 2021, at 11:00 am or as soon thereafter as the motion can be heard, via Zoom teleconference the details for which are in Schedule "A" hereto.

**PROPOSED METHOD OF HEARING:** orally.

**THE MOTION IS FOR:** an order, substantially in the form of the suggested draft in the motion record, extending the "Stay Period" defined in the second amended and restated initial order made by McEwen J. on October 27, 2020 to and including September 10, 2021 (3 months).

**THE GROUND FOR THE MOTION ARE:**

1. Capitalized terms are defined in the affidavit of Atef Salama sworn June 3, 2021 (the "**Salama June Affidavit**").

2. Since the last extension made on March 8, 2021, EGR has notably:
  - a. continued operating its business in accordance with the court's orders and the Protocol, while complying with COVID-19 legal requirements and best practices, and
  - b. continued managing the Tax Litigation.
3. EGR will be able to support its operations, the Tax Litigation, the herein proceeding and the Protocol for the duration of the extension sought.
4. The Applicant has acted, is acting and will continue to act in good faith and with due diligence, and the sought extension is appropriate, as more fully appears from the Salama June Affidavit.
5. CCAA s. 11, 11.02, 11.03, 11.09, and 18.6.
6. Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, rules 2.03 and 3.02.
7. Such other and further grounds as counsel may advise and the court permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

- a. the Salama June Affidavit,
- b. the fifth report of the Monitor, to be served and filed separately, and
- c. such further and other evidence as counsel may advise and the court may permit.

June 3, 2021

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**TO: THE SERVICE LIST**

**Schedule “A” – Videoconference Details**

Zoom details:

Join Zoom Meeting

<https://zoom.us/j/98234867833?pwd=ZVd5ZHVpSVp3MElsd3BEjdk0L1VxUT09>

Meeting ID: 982 3486 7833

Passcode: 724168

Find your local number: <https://zoom.us/u/ads8aKjFhq>

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF EXPRESS GOLD REFINING LTD.**

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
**Proceeding commenced in TORONTO**

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**NOTICE OF MOTION**  
**(extension of stay period)**  
**(returnable June 8, 2021)**

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Lawyers for the Applicant, Express Gold Refining Ltd.



**TAB 2**

Affidavit of Atef Salama sworn June 3, 2021

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  
(the "CCAA")

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF EXPRESS GOLD REFINING LTD.  
("EGR")

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**AFFIDAVIT OF ATEF SALAMA  
(sworn June 3, 2021)**

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I, Atef<sup>1</sup> Salama, of the City of Toronto, in the Province of Ontario, **MAKE OATH  
AND SAY:**

1. I am EGR's Vice-President and have been since 2001. As such I have personal knowledge of the facts and matters deposed in this affidavit save where the same are stated to be based upon information or belief, and where so stated I verily believe the same to be true.

**I. PURPOSE HEREOF**

2. This affidavit is long and I want to explain why.

3. This affidavit is filed in support of EGR's motion for an extension of the Stay Period (defined below) to and including September 10, 2021 (3 months).

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<sup>1</sup> Sometimes spelled "Atif".

4. To that end, I am informed that EGR must demonstrate that it satisfies the CCAA requirements to act with due diligence and good faith. I thus begin by recounting below EGR's actions since the last CCAA stay extension from an operational perspective (section III.A.).
5. However, as discussed, the unquestionable central element of EGR's current situation, including its insolvency and these CCAA proceedings, is the Tax Litigation (defined below). We are now 8 months into these CCAA proceedings and more than one year into the Tax litigation and there are clearly elements present in this process which require attention alongside the prerequisite of recounting how EGR is acting in good faith and due diligence with respect to the Tax Litigation.
6. With the original notice of appeal to the Tax Court of Canada having been filed over 14 months ago (and the "Fresh-as-Amended" notice of appeal having been filed almost one year ago), I am concerned, as I further discuss below (in section III.C.), that the Tax Litigation is not progressing at a pace that accounts for the imperatives of EGR's insolvency and the costs of these CCAA proceedings. As will be explained, EGR is by necessity focussed on the expeditious prosecution of the Tax Litigation. This is true because both it and these CCAA proceedings can present existential threats to EGR's business and the treatment of EGR's stakeholders, other than CRA. In Section III.C., I set out the issues that prevent any attempt at a financial restructuring, and for which CRA is responsible both as a cause and a potential solution.
7. To substantiate and bridge the gap between such long-term considerations (section III.C.), the current status of the Tax Litigation (discussed at section III.B.ii.-iv.), and EGR's good faith and due diligence throughout, it is appropriate to summarize the events leading to

the CCAA application as they relate to the Tax Litigation (section III.B.i.), and to provide an overview of the many difficulties, delays and obstacles faced by EGR not only in the Tax Litigation, but also in surrounding procedures such as access to information requests (section III.B.v.).

8. So, alongside the necessity of obtaining an extension of the Stay Period, this is an opportunity to bring to the attention of the court, with adequate substantiation, my most serious concerns expressed in section III.C. which reflect on the potential impairment of the CCAA proceedings caused by CRA's choices and conduct both in and around the Tax Litigation.

## **II. OVERVIEW OF THESE PROCEEDINGS**

9. EGR is in the precious metal (predominantly, gold) refining and trading business.
10. EGR's resort to relief under the CCAA was necessary due to (i) the Canada Revenue Agency ("CRA")'s refusal to pay EGR's net tax refunds, including input tax credits under the *Excise Tax Act* (the "ETA"), since August 2018, and (ii) reassessments in excess of \$189,000,000 issued to EGR on July 28, 2020 for the period from June 1, 2016 to October 31, 2018 (the "**2020 Reassessments**").
11. The 2020 Reassessments are being challenged by EGR (the "**Tax Litigation**") in the Tax Court of Canada ("**Tax Court**"). However, they are enforceable notwithstanding contestation,<sup>2</sup> and on or around October 8, 2020, CRA announced it would commence enforcement measures on October 15, 2020.

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<sup>2</sup> I am referred to the [Excise Tax Act](#), s. 315.

12. The orders made so far in this proceeding are:
  - a. the October 15, 2020 initial order made by Hainey J.,
  - b. the October 19, 2020, amended and restated initial order made at the comeback hearing by McEwen J.,
  - c. the October 27, 2020, second amended and restated initial order (the “**SARIO**”) made by McEwen J., of which I attach a copy as **Exhibit “A”**, and
  - d. the December 14, 2020 and March 8, 2021 orders of McEwen J., respectively extending to March 15, 2021 and June 11, 2021 the “**Stay Period**” defined in the SARIO (3 months each). I attach a copy of the March 8 order (the “**March 8 Order**”) as **Exhibit “B”**.
  
13. This is not an operational restructuring. But for CRA’s refusal to pay EGR’s net tax refunds and the 2020 Reassessments, EGR would be solvent and its business would be profitable. An application under the CCAA was necessary due to the impending threat to invoke collection remedies in respect of the 2020 Reassessments which, if effected, would have terminated EGR’s business to the detriment of EGR and its stakeholders other than CRA. These CCAA proceedings are intended, *inter alia*, to maintain a *statu quo* and allow EGR to obtain, as a first milestone of a restructuring, a decision on the merits in the Tax Litigation.
  
14. Hence, the SARIO provides:
  - a. that EGR remains, under a stay of proceedings, in possession of its business and property and is entitled to pay its normal business expenses and to satisfy its

creditor obligations whether incurred before or after the making of the initial order,<sup>3</sup>

- b. that a stay of proceedings applies but the Tax Litigation may continue,<sup>4</sup> and
- c. for the court's approval and sealing of a protocol (the "**Protocol**") agreed to on October 27, 2020 among EGR, CRA and Deloitte Restructuring Inc. as monitor in the herein proceedings (in such capacity, the "**Monitor**"),<sup>5</sup> as such Protocol was amended with court approval provided in the March 8 Order.

15. This motion is for an extension of the Stay Period to and including September 10, 2021 (3 months).

### **III. ACTIONS SINCE LAST INITIAL ORDER EXTENSION**

16. Since the last extension made on March 8, 2021, EGR has notably:
- a. continued operating its business in accordance with the Protocol and while complying with COVID-19 legal requirements and best practices, and
  - b. continued managing the Tax Litigation.
17. Each of the above is discussed below.

#### **A. Operations**

##### i. Protocol

18. I provided background on the necessity of the Protocol in my prior affidavit sworn December 9, 2020 in support of the first motion for extension. I attach a copy of that affidavit, without exhibits, as **Exhibit "C"**.
19. In a nutshell, the Protocol was proposed, developed and implemented through collaboration between EGR, CRA and the Monitor to, among other things and in

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<sup>3</sup> I am referred to paragraphs 4 to 9 of the SARIO.

<sup>4</sup> I am referred to paragraph 10 of the SARIO.

<sup>5</sup> I am referred to paragraphs 15 to 18 of the SARIO.

combination with the stay of proceedings, allow EGR to receive, in accordance with the applicable tax statutes, its net tax refunds payable in respect of periods postdating the stay of proceedings.

20. For reasons further set out in my prior affidavit sworn March 3, 2021, of which I attach a copy without exhibits as **Exhibit “D”**, the Protocol was amended with common accord of the parties and was approved by this court, as amended, in the March 8 Order.
21. The Protocol, as amended, is subject to a sealing order and confidentiality terms. I will not discuss its substance but by way of update to the court, it has now been firmly implemented and is ongoing. The Monitor is performing its role thereunder, including at EGR’s premises (with the appropriate social distancing measures in place), as I understand will be more fully set out in the Monitor’s fifth report, to be served and filed separately (the “**Fifth Report**”).

- ii. State of the business

22. EGR continues its business operations in accordance with this court’s orders.
23. While the Ontario reopening plan (or “[Roadmap to Reopen](#)”) has been announced on May 20, 2021, the province is not out of COVID-19. At the time of writing this affidavit, Ontario had not yet reached step 1 of the reopening plan. Toronto in particular remains under, *inter alia*, a stay-at-home order which I am advised is provided in Ontario Regulation 265/21 made under the *Emergency Management and Civil Protection Act* on April 7, 2021.
24. EGR continues to operate its business in accordance with the regulations in place. Since and for the duration of the temporary lockdown, EGR has and will, in cooperation with

the Monitor, continue to take all necessary steps to ensure it operates in accordance with the applicable regulations.

25. However, I believe the disruption, uncertainty and concern caused by the pandemic have had a negative adverse effect on EGR's business, which is difficult to precisely quantify and isolate from the other factors discussed below, but can hardly be denied. EGR's business was particularly vulnerable to those disincentives as it necessitates the hands-on bringing, exchanging and handling of materials between our staff and customers. While distancing measures have been implemented to limit and prevent where possible direct and indirect physical contacts, the fact remains that I have predictably noticed throughout the pandemic that fewer customers have walked in.
26. Beyond COVID-19, however, I believe that the additional issues and factors noted in paragraph 22 of my December 9, 2020 affidavit (Exhibit "C") continue to adversely affect the business.
27. Notwithstanding such decline in business, EGR generates revenues, primarily from its trading activities which have historically been a relatively small part of EGR's activities. I understand that the details and figures regarding EGR's business since the latest Monitor's report will be set out in the Fifth Report. I believe EGR will be able to support its operations, the Tax Litigation, the herein proceeding and the Protocol for the duration of the extension sought, as I understand will more fully appear from the Fifth Report.

**B. Status of the Tax Litigation**

28. The background of the CRA audit that resulted in the 2020 Reassessments ("Audit") and other events are necessary context for a proper understanding of the status of the Tax Litigation, including with respect to lack of information/document disclosure.



i. Recap of events leading to CCAA application

29. This background leading up to the commencement of this CCAA application is referenced in some further detail in my affidavit sworn October 14, 2020 and filed in support of the CCAA application, of which I attach a copy without exhibits as **Exhibit “E”** for reference. A summary of those events is as follows:

- a. The CRA auditor (the “**Auditor**”) requested various information and documentation from EGR in November 2018. EGR promptly complied with this request and hosted the CRA Audit team for a site visit of EGR’s premises and interview in January 2019.
- b. Between January 2019 and May 2020 (when the 2020 Reassessment proposal was issued), the Auditor did not ask me, EGR, or EGR’s representatives for any additional documents or information whatsoever, except for the following:
  - i. a site visit took place in October 2019 to a premises leased by EGR that has not been operational for many years.
  - ii. a November 2019 request from the Auditor and corresponding response from EGR regarding financial report working papers and inventory.
  - iii. information and documentation requested when CRA added additional reporting periods to the audit.
  - iv. I note that on multiple occasions (the latest being March 2020) I contacted the Auditor by phone to confirm whether she required any additional documentation and information, and the Auditor confirmed to me that nothing additional was required.

- c. In December 2018, EGR commenced an application in the Federal Court for a *mandamus* order for payment of net tax refunds withheld by CRA. Just over two weeks after the July 3, 2019 hearing of EGR’s *mandamus* application and with no warning whatsoever, CRA issued interim reassessments (the “**2019 Reassessments**”), pending the outcome of the Audit, raising multiple alternative allegations never previously raised with EGR by CRA. This is further described in paragraphs 81-90 of my October 14, 2020 affidavit (Exhibit “E”). Without any apparent reason, CRA did not give EGR the ability to respond to these various allegations prior to issuing those reassessments. The effect of the 2019 Reassessments was to neutralise the relief sought – such that if EGR were to have succeeded on the *mandamus* application with respect to certain periods that were outside of the Audit, the debt raised through the 2019 Reassessments would offset and make such judicial relief moot.
- d. In May 2020, CRA issued the reassessment proposals that underlie the 2020 Reassessments, concluding that the EGR “on a balance of probabilities” was wilfully blind to a carousel scheme. The core basis outlined in the proposal for the allegation relates to certain purported assumptions regarding volume and purity metrics in the gold refining market in the greater Toronto area, and purported differences between EGR’s business and that of a typical market participant.
- e. Following the issuance of the May 2020 proposal letter, EGR repeatedly requested that CRA disclose the assumptions and data forming the basis for CRA’s calculations so that EGR could properly respond to the allegations. EGR also requested a 60-day extension of time from the disclosure from that additional

information to properly respond to the allegations. However, CRA repeatedly refused such disclosure, citing confidentiality provisions under section 295 of the ETA and only granted a two week extension to respond. EGR also requested basic details of CRA's allegation that there were "significant issues" with the data provided that rendered CRA unable to trace scrap gold or pure gold through EGR's books and records with any degree of accuracy; however, CRA refused to disclose such detail (until approximately 6 months later during the course of the Tax Litigation).

- f. On July 10, 2020, EGR's tax counsel ("**Tax Counsel**") wrote to CRA and stated that the "lack of disclosure puts EGR in an impossible situation and deprives it of the most basic fairness and due process, especially given the nature and seriousness of the allegations contained in the [May 2020 proposal letter] and their potential fatal impact on EGR". The letter also noted that CRA's assumptions and data would be general market information that would not contain identifying information, such that they would not be confidential and, furthermore, that, under paragraph 295(5)(b) of the ETA, CRA would be permitted to provide EGR with confidential information that can be reasonably regarded as necessary for the purposes of determining EGR's liability under the ETA.
- g. In a letter dated July 28, 2020, CRA continued to refuse to release the information and insisted on issuing the proposed reassessments. CRA specifically noted that it "was precluded from disclosing this information *at the audit stage* under section 295 of the ETA" (emphasis added).

- h. CRA issued the 2020 Reassessments the following day.
  - i. On August 5, 2020, Tax Counsel again wrote to the Auditor requesting certain information/documentation from the Audit file.
  - j. On September 11, 2020, EGR filed its Fresh As Amended Notice of Appeal in the Tax Court in connection with the 2020 Reassessments for the reporting periods that were also the subject of the 2019 Reassessments.
  - k. By way of letter dated September 17, 2020, CRA denied EGR's August 5, 2020 request for disclosure of CRA's Audit file, citing the Tax Court appeal and involvement of Department of Justice. I am informed by Tax Counsel that the Auditor's file, including position paper, Auditor's notes and Audit Report are typically released to taxpayers as a matter of course when reassessments are issued.
  - l. On October 2, 2020, Tax Counsel wrote to counsel for CRA in the Tax Litigation ("**DOJ**") to reiterate its information/document request made to the Auditor in its August 5, 2020 letter.
  - m. In early October 2020, CRA commenced collections procedures with respect to the approximately \$180 million debt arising from the 2020 Reassessments, thus forcing EGR into seeking CCAA protection.
    - ii. Procedural developments in the Tax Litigation since the CCAA application
30. Relevant developments in the Tax Litigation subsequent to filing of the CCAA application largely consist of interactions between Tax Counsel and the DOJ.

31. While CRA's Reply in the Tax Litigation was due to be filed on November 12, 2020, by letter of October 14, 2020, DOJ requested that EGR consent to a 60-day extension to January 29, 2021.
32. By letter of October 20, 2020, DOJ stated that it was prepared to provide "key documents" such as the position paper, penalty report, and audit report, subject to redactions for privileged or third party information.
33. With respect to the DOJ's request for an extension of time to file its Reply to January 29, 2021, by letter of November 4, 2020, Tax Counsel initially refused to consent to this request, noting that timely resolution of the Tax Litigation is vital given the magnitude of the 2020 Reassessments, the nature of the allegations and the significant costs being incurred related to the CCAA proceedings that CRA has forced EGR into.
34. After further discussions between Tax Counsel and DOJ, by letter of November 30, 2020, Tax Counsel ultimately consented to CRA's extension request on certain conditions, including that the parties: (1) jointly request case management in the Tax Court; (2) proceed with full disclosure pursuant to Rule 82 of the *Tax Court Rules*; and (3) exchange affidavits of documents and the documents listed therein by March 31, 2021. The purpose of these conditions was to advance the Tax Litigation on a more efficient and timely basis.
35. In this regard, I understand from Tax Counsel that Rule 81 (partial disclosure) is the standard rule for document disclosure in the Tax Court and requires that the parties disclose only documents that they intend to rely on at trial. In proceeding under Rule 81, the parties would have the opportunity to seek any additional relevant documentation through the examination for discovery process, thus leaving significant portions of

relevant documentation undisclosed until after oral examinations for discovery are initially completed.

36. Rather than proceed on the basis of Rule 81, and given the history and complexity of the matter and CRA's on-going refusal to disclose information/documentation (including vis-à-vis access to information requests, discussed further below), EGR sought to have all relevant documents disclosed by each party "up front" in advance of the examinations for discovery process, with a view to having examinations for discovery proceed on a more efficient and timely basis and minimize the otherwise voluminous undertakings expected to result from that process. Accordingly, EGR proposed to proceed under Rule 82, which requires the parties to exchange an affidavit of documents containing a list of all the documents that are or have been in that party's possession, control or power relevant to any matter in question between or among them in the appeal. I understand from Tax Counsel that rule 82 is similar to the document production requirements under the *Ontario Rules of Civil Procedure*.
37. By letter of December 4, 2020, DOJ agreed to the above three conditions.
38. On the afternoon of December 24, 2020, by way of email, the DOJ disclosed copies of a June 28, 2020 Position Paper and an Audit Report, each authored by the Auditor and each appearing to be subject to substantial redactions.
39. The position paper raised two sensational allegations as follows: (1) EGR purchased 858,213.26 more grams of gold than it sent to a third-party refiner; and (2) EGR received \$123,350,000 worth of pure gold that was not accounted for at year end. EGR was never asked about these purported discrepancies by CRA during the course of the Audit nor were they raised in the proposal letter or final reassessment letter, despite Tax Counsel

specifically requesting details of such allegations from CRA at the time. These allegations are completely and demonstrably false. EGR will refute these if/when given the opportunity to do so before the Tax Court.

40. DOJ filed the Reply to the Fresh as Amended Notice of Appeal January 29, 2021.

iii. Tax Litigation document disclosure

41. The parties exchanged affidavits of documents under rule 82 on March 31, 2021 as agreed and also exchanged the documents listed therein.

42. EGR's affidavit of documents and corresponding production disclosure included twelve separate headings of disclosure such as, *inter alia*:

a. all correspondence between EGR or its representatives and CRA and other governmental authorities with respect to GST/HST and related documents from January 1, 2005 to present.

b. correspondence and documents related to GST/HST-related demands from third parties and other third-party correspondence and documents.

c. photographs taken by Asahi Refining of scrap gold lots received by Asahi Refining from EGR during the relevant period.

d. all emails between EGR and the Subject Customers (as defined in the Fresh as Amended Notice of Appeal) from June 1, 2015 to October 31, 2018.

e. all emails between EGR personnel and Asahi Refining / Johnson Matthey from June 1, 2015 to October 31, 2018.

43. After review of the documentation received from CRA in its productions, EGR is of the view that CRA's affidavit of documents is deficient and does not comply with Rule 82. In

this regard, the disclosure appears to merely consist of some, but not all, working papers in the Auditor's exclusive possession; some, but not all, third party disclosure; and certain position papers and reports related to third parties. Despite the plethora of CRA officials involved in the Audit and who interacted with EGR on GST/HST issues over the years or who were otherwise involved in the Audit, the substantive documentation disclosed appears to be limited to about 200 documents that were in the possession of the Auditor. It does not appear that any other CRA officials were canvassed in compiling the CRA disclosure, nor were *any* emails or other communications between and among CRA officials disclosed.

44. Furthermore, many of the documents disclosed by CRA in the course of the Tax Litigation are subject to significant redactions, which EGR understands are purported to be made pursuant to subsections 295(2) and/or (3) of the ETA, and namely, constitute certain information/documentation received from or in respect of third parties. However, subsection 295(4) of the ETA states that: "Subsections (2) and (3) do not apply in respect of... any legal proceedings relating to the administration or enforcement of [the ETA]..." Notably, as discussed above, when CRA purported to rely on section 295 during the Audit in its July 28, 2020 letter, CRA specifically noted that it section 295 precluded the CRA from disclosing this information *at the audit stage*.
45. Tax Counsel wrote a letter to DOJ on April 23, 2021, of which I attach a copy as **Exhibit "F"**, noting that CRA's disclosure is implausibly narrow, falls short of CRA's Rule 82 obligations and fails to include substantial categories of relevant documents. The letter included a list of examples of categories of documentation that are relevant to the Tax Litigation.



46. CRA’s counsel responded by letter dated May 5, 2021, of which I attach a copy as **Exhibit “G”**, endeavouring to provide certain missing documents by the end of June 2021, but denying that certain categories of documentation identified by Tax Counsel are required to be disclosed.
47. The case management judge in the Tax Litigation (the “**Case Management Judge**”) directed the parties to attempt to reach an agreement on the scope of CRA’s disclosure of documents, in lieu of which a motion would be heard in early September 2021 to address the issue. I attach a copy of that direction as **Exhibit “H”**.

iv. Tax Litigation timetable

48. The Case Management Judge encouraged the parties to agree to a proposed timetable for the remaining steps in the litigation. Tax Counsel proposed a timetable via a May 3, 2021 email to DOJ, of which I attach a copy as **Exhibit “I”**, as follows:

<b>Step</b>	<b>Deadline</b>
Additional disclosure from CRA and resolving related issues	May 31, 2021
Complete Examinations for Discovery	July 31, 2021
Satisfy undertakings, if any	August 31, 2021
Communicate questions arising from undertakings, if any	September 15, 2021
Provide answers to questions arising from undertakings, if any	September 30, 2021
Resolution of issues arising from Examinations for Discovery, if any	September 30, 2021
Formal Application to fix hearing	September 30, 2021

49. In a May 5, 2021 letter, of which I attach a copy as **Exhibit “J”**, DOJ rejected the above timetable and noted that the expectation that discoveries could take “a couple of years” to complete is reasonable and provided a much more protracted timetable as follows:

<b>Step</b>	<b>Deadline</b>
Deadline for EGR to bring motion re: CRA productions	September 15, 2021
Parties complete disclosure arising out of motion result	Unknown
Complete Examinations for Discovery	+ 6-8 months
Respond to undertakings	+ 60 days
Communicate questions arising from undertakings, if any	+ 30 days

Provide answers to questions arising from undertakings, if any	+ 30 days
Formal Application to fix hearing	+ 60 days

50. The Case Management Judge has not determined a timetable for the remaining steps in the appeal, pending resolution of the document disclosure issues discussed above.

v. In parallel: EGR's access to information requests

51. EGR has also been seeking documentation from CRA pursuant to access to information requests that have not been satisfied, in whole or in part, to date.

52. Namely, through a March 28, 2019 letter, of which I attach a copy as **Exhibit "K"**, Tax Counsel submitted an *Access to Information Act* request (the "**First Request**") to the Access to Information and Privacy Directorate of the CRA ("**ATIPD**"). The First Request was for all records from/to any CRA employee relating to EGR, from December 1, 2013 through to March 28, 2019. Specific CRA employees were named in the First Request.

53. A Senior Consultant with the ATIPD, Regional Operations Case Division, Montreal ("**ATIP Official 1**") wrote a letter to Tax Counsel on April 8, 2019, on which I attach a copy as **Exhibit "L"**, confirming ATIPD's receipt of the First Request on April 1, 2019, indicating that a reply to the First Request would be sent as soon as possible. I am informed by Tax Counsel that ATIP Official 1 contacted Tax Counsel by phone on April 9, 2019 to confirm the scope of the First Request and that Tax Counsel confirmed that submissions by EGR or its representatives to CRA could be excluded from the response to the First Request.

54. I am informed by Tax Counsel that ATIPD subsequently advised that the First Request would not be responded to within the statutory time period and that the ATIPD would respond to the First Request by December 1, 2020.

55. I am informed by Tax Counsel that Tax Counsel contacted ATIP Official 1 on September 11, 2020 to determine the status of the response. ATIP Official 1 indicated that the file was transferred to his colleague (“**ATIP Official 2**”) and that Tax Counsel should contact ATIP Official 2 for a response.
56. I am informed by Tax Counsel that Tax Counsel reached ATIP Official 2 by phone on September 21, 2020 and ATIP Official 2 confirmed that:
- a. the file was transferred to her,
  - b. the documents had already been received by the ATIPD from the various CRA employees at issue,
  - c. she did not know when a response would be provided,
  - d. timing would depend on whether ATIP Official 1 had completed any review of the documents before transferring them to her, and
  - e. she would review the file and provide Tax Counsel with an update.
57. I am informed by Tax Counsel that having not heard back, Tax Counsel contacted ATIP Official 2 by phone on November 19, 2020 for a status update, at which time ATIP Official 2 advised that:
- a. neither her, ATIP Official 1, nor any other ATIPD official reviewed any of the received documents to date,
  - b. the response could not be provided by December 1, 2020, and
  - c. she would discuss with her Team Leader (“**ATIP Official 3**”) whether the documents could be released in partial tranches as they were reviewed.

58. I am informed by Tax Counsel that, having not heard back, Tax Counsel contacted ATIP Official 2 by phone on December 8, 2020 to determine the status, at which time ATIP Official 2 stated that:
- a. the ATIPD refused to provide any partial release of the documents as they were reviewed (*i.e.*, no documents would be released until all documents were reviewed and released), and
  - b. if the scope of the First Request was reduced in any way at that juncture, the entire process would have to start again from scratch.
59. I am informed by Tax Counsel that ATIP Official 3 contacted Tax Counsel by phone on December 9, 2020 and indicated that the ATIPD would work to provide the response as soon as possible.
60. I am informed by Tax Counsel that Tax Counsel left each of ATIP Official 2 and ATIP Official 3 voicemails March 22, 2021 to determine status.
61. I am informed by Tax Counsel that ATIP Official 3 contacted Tax Counsel by phone on March 23, 2021, during which she confirmed that:
- a. ATIP Official 3 was in contact with GST/HST auditors at the Saskatchewan Tax Services Office (who were named in the First Request) to discuss the file and that those auditors stated to her that the First Request was a “big deal” and that there are on-going court proceedings that are relevant to the First Request.
  - b. neither ATIP Official 3 nor anyone at the ATIPD had reviewed any of the documents received by the ATIPD with respect to the First Request to date.

- c. the file was transferred to another officer (“**ATIP Official 4**”) and that he was out of office on vacation.
62. I am informed by Tax Counsel that Tax Counsel contacted ATIP Official 4 by phone on April 7, 2021, upon his return to office, at which time ATIP Official 4 stated that:
  - a. the First Request was transferred to him.
  - b. no one at the ATIPD, including him, had commenced a review of any of the documents provided to ATIPD.
  - c. he would not be able to *commence* work on the file for the foreseeable future because he had other larger files in priority, including a 25,000 page file.
  - d. given his limited capacity, he did not know the rationale behind the First Request being transferred to him and that such decisions as to allocation are made at higher levels.
  - e. given his current capacity, ATIP Official 4 would endeavor to *update* Tax Counsel as to the status of the First Request in October 2021 (a full 2.5 years after the First Request was made) to provide a better idea of when the response could be completed.
63. EGR filed a complaint with respect to the handling of the First Request pursuant paragraph 30(1)(c) of the ATIA, which remains open.
64. EGR filed a separate an *Access to Information Act* request (the “**Second Request**”) to the ATIPD on April 7, 2021, requesting all correspondence between and among all ATIPD officials and all personnel of the Saskatchewan Tax Services Office regarding the First Request.

65. The Second Request remains open and ATIPD wrote to Tax Counsel on May 10, 2021 extending the time to complete the Second Request by up to 60 days beyond the 30-day statutory time limit because meeting the original time limit would unreasonably interfere with CRA operations.

**C. Long-term considerations**

66. EGR being able to sustain itself and the costs of all the legal and administrative processes in which it must engage (i.e. the Protocol, the Tax Litigation and the herein proceedings) for the next extension period of 3 months is quite different from EGR being able to do so for the medium or long term (e.g., 1 year or more). While those heads of costs are not individually problematic, unreasonable or unjustified, they together amount to a substantial weight on EGR's cash flow over time. I understand that an indication of the current expenses in this regard will more fully appear from the figures in the Fifth Report. I discuss some resulting long-term considerations below.

i. CRA has not assessed EGR for periods postdating those targeted by the 2020 Reassessments and predating the initial order/stay of proceedings

67. As stated above, the 2020 Reassessments are in respect of the period from June 1, 2016 to October 31, 2018.

68. Assessments (or reassessments) are typically issued in the ordinary course and they provide any business, including EGR, with certainty as to their GST/HST position with CRA.

69. Of all the conditions necessary for EGR to be able to formulate a viable plan of arrangement and to exit these CCAA proceedings, CRA's assessments of EGR for all periods preceding the CCAA initial order, in good faith and on the basis of correct and verifiable positions in fact and in law, is a *sine qua non*.

70. The reasons for this are multiple, but the most evident is that EGR cannot realistically hope to effect an arrangement that is subject to the sword of Damocles represented by *post facto* assessments or reassessments from CRA. I am aware and acutely anxious that CRA could, including through yet-issued assessments or reassessments for pre-filing periods, prolong the Tax Litigation, create additional tax litigation, or generally delay the timely resolution of the disputes between EGR and CRA, all requiring EGR to embark on yet additional financially crippling procedures while continuing to bear the costs of the CCAA proceeding along the way.
71. No viable plan may account for such a contingency; yet, CRA has not provided assessments to EGR for any periods between those targeted in the 2020 Reassessments (from June 1, 2016 to October 31, 2018) and the CCAA initial order and stay of proceedings (dated October 15, 2020).<sup>6</sup> I am advised by Tax Counsel that such periods remain under audit. One must therefore realize that CRA truly holds complete power over EGR's ability to work towards an arrangement until it issues such assessments.
72. I anticipate that should EGR commence a typical CCAA claims process, CRA would object and maintain that they cannot or should not be made subject to such routine CCAA measures. EGR currently seems to have no means to compel CRA to deliver the aforementioned assessments and these proceedings will as a result be adversely affected until this hurdle can be breached either by CRA's acquiescence or resort to legal process. I remain hopeful that CRA will recognize that participating in this proceeding in good faith requires the production of such assessments and that it will do so of its own *bona fides* volition. However, if this does not come to pass in the near future, EGR would be

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<sup>6</sup> It being understood that post-filing periods fall under the umbrella of the Protocol, and in respect of those there have been some assessments issued.

compelled to seek a resolution to such an impediment as it is a fundamental element of diligently and effectively pursuing a viable restructuring process in keeping with the imperatives of the CCAA.

ii. The Tax Litigation has the potential to drive EGR out of business permanently, regardless of merits

73. I review EGR's professionals' accounts and can confirm that the Tax Litigation is, unsurprisingly, expensive to maintain.
74. I believe CRA is, with respect to the Tax Litigation, in a position to create an environment which would erode EGR's financial viability by simply seeking ways and means to lengthen and complicate the Tax Litigation through refusals, delays, splitting issues, lack of particulars, far-reaching allegations, insistence on procedural steps, etc., so as to force EGR out of business by having to respond to such actions. This would rob EGR and its stakeholders of the benefit of showing that the substance of the 2020 Reassessments and CRA's allegations in the Tax Litigation are unfounded.
75. While (overly) zealous litigating may not be illegitimate *per se* in the case of a solvent entity, EGR is facing the bright line of insolvency, and it and its stakeholders must bear the necessary burden of funding the CCAA proceeding, including the Protocol, alongside the Tax Litigation. The financially corrosive effect of this is a threat to EGR's capacity to survive, yet EGR's collapse would be to the detriment of all its stakeholders other than CRA – including its employees, customers, suppliers, and equity holders.
76. In light of the status and development of the Tax Litigation as set out above, I am deeply concerned that EGR may be forced to experience fresh and continuing financial hardship by reason of CRA's positioning in the Tax Litigation – in addition to the ever-floating



assessment process – unless there is a recognition of this situation and appropriate engagement by the parties in a manner consistent with the exigencies of a CCAA proceeding, not those of ordinary civil litigation.

iii. CRA's continued withholding of pre-initial order net tax refunds

77. As is noted in my initial affidavit (Exhibit "E"), CRA has been withholding payment of EGR's input tax credits in respect of periods pre-dating the stay of proceedings that relate to GST/HST paid by EGR to suppliers who have not been implicated by the CRA through the 2020 Reassessments. This is because CRA is setting off those pre-stay input tax credits against the debt raised in the 2020 Reassessment, which is enforceable notwithstanding contestation, as an enforcement mechanism.
78. There are customers and suppliers of EGR who have been adversely affected by such CRA withholding/set-off despite not being implicated in CRA's allegations surrounding the 2020 Reassessments. This is because, for reasons more amply set out in my prior affidavits, a large proportion of such input tax credits would, in the normal course of EGR's business, be received by EGR to then "flow through" to such customers and suppliers. Due to CRA's withholding/set-off, and notwithstanding that such parties are not implicated in CRA's allegations, those innocent bystanders suffer a prejudice, which in turns creates possible claims against EGR for the deficiency.
79. This also adds to the adverse perception of EGR's business in the market, as customers and suppliers would be reluctant to risk being caught up in such CRA's withholding of input tax credits preventing their flowing through to them. Despite EGR and the Monitor's confidence that CRA cannot raise such issues with respect to transactions postdating the stay of proceedings onward, it remains that:

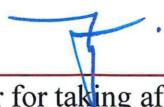
- a. the Protocol does not, at this stage, address pre-filing net tax refunds, and
  - b. EGR's customers and suppliers have to "take EGR's word for it", since (i) the Protocol's terms are sealed and confidential, and (ii) the Protocol remains subject to CRA's good faith compliance.
80. I can understand that from the perspective of a "lay person" (such as most commercial actors who are not jurists or versed in restructuring practices), those are complex matters which create a perceived risk and therefore a disincentive to deal with EGR; this in turn affects EGR's bottom line for as long as the Tax Litigation persists.
81. Another issue is that the proportion of pre-filing net tax refunds that EGR would in the normal course recuperate for its own account (i.e., the proportion that would not flow through to third parties, e.g. for operating expenses) is money to which EGR is entitled to but for the fact that the 2020 Reassessments are enforceable notwithstanding contestation. In other words, if EGR wins its case in Tax Court (which EGR and Tax Counsel are confident will happen if allowed to), those amounts set off will be handed back to EGR. If those amounts set off were freed now, this would alleviate the pressure on EGR's finances, and potentially prevent the need for EGR to resort to what I am referred to as "debtor-in-possession" or "DIP" financing, which should not be necessary in the short term but may become necessary later. Avoiding DIP financing is indeed in the interest of all stakeholders, including CRA.
82. Furthermore, it strikes me as unfair that the parties affected by the pre-filing withholding, and that are not implicated by CRA's allegations in the Tax Litigation, are being treated differently than any such parties who happened to conduct business with EGR post-Protocol. It is EGR's position that these amounts should be released to these parties,

which would have the added benefit of providing tangible evidence that EGR is in a position to conduct its business in a viable manner while engaging CRA in the Tax Litigation.

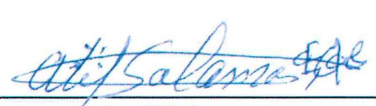
**IV. NEED FOR CONTINUED CCAA RELIEF**

83. The need for extension of the stay provisions is self-explanatory considering the \$180 million 2020 Reassessments are otherwise enforceable notwithstanding contestation. The continuation of the stay is intended to maintain the *statu quo* so that EGR may obtain, as a first milestone of its restructuring, a decision on the merits of its case in the Tax Litigation.
84. The SARIO provides that the Protocol terminates automatically upon termination of these CCAA proceedings, and so EGR requests the continuation of these proceedings to allow the Protocol to remain within this court's jurisdiction to enforce, as the case may be.
85. With the above in place, EGR has and will continue to act with due diligence and good faith with respect to the Tax Litigation, its business and operations, and its relationship with CRA more generally.

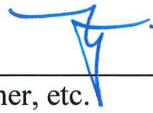
SWORN BEFORE ME via Zoom at the City of Toronto, in the Province of Ontario, this 3<sup>rd</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*

  
\_\_\_\_\_  
Commissioner for taking affidavits  
(present at Toronto at the time of swearing)

JOËL TORGEON

  
\_\_\_\_\_  
Atef Salama  
(present at Toronto at the time of swearing)

This is **Exhibit "A"** to the affidavit of Atef Salama sworn before me via Zoom this 3<sup>rd</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

Soel TURGEON

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST



THE HONOURABLE MR. )

TUESDAY, THE 27<sup>TH</sup>

JUSTICE McEWEN )

DAY OF OCTOBER, 2020 )

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 EXPRESS GOLD REFINING LTD.  
(the "Applicant")

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SECOND AMENDED AND RESTATED INITIAL ORDER

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THE INITIAL APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), was heard on October 15, 2020 at 330 University Avenue, Toronto, Ontario, by videoconference due to the COVID-19 pandemic.

THE APPLICANT'S MOTION for the first Amended and Restated Initial Order was heard on October 19, 2020, and THE APPLICANT'S MOTION for the herein Second Amended and Restated Initial Order was heard this day on October 19, 2020 at 330 University Avenue, Toronto, Ontario, also by videoconference due to the COVID-19 pandemic.

ON READING the affidavit of Atef Salama sworn October 14, 2020 and the exhibits thereto (collectively, the "**Salama Affidavit**"), and on reading the pre-filing report of Deloitte Restructuring Inc. ("**Deloitte**") as proposed monitor, and on reading the consent of Deloitte to act as the appointed monitor (in such capacity, the "**Monitor**"), and on hearing the submissions of counsel for the Applicant, Deloitte, and such other counsel as were present as indicated on the counsel slip, no one else appearing despite being served as evidenced in the affidavit of service, filed:

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

**APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

3. THIS COURT ORDERS AND DECLARES that the herein Order continues the Initial Order made on October 15, 2020 by Hainey J. and effective as of 12:01 a.m. Eastern Standard/Daylight Time on such date, together with any amendment or restatement of the same.

**POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay or otherwise deal with its creditors' claims, whether arising before or after the making of this Order, in accordance with the contracts and agreements in place as of the date of this Order, or that may be mutually agreed upon thereafter.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order; and
- (c) payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date or thereafter.

8. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and

services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that the Applicant is hereby directed, until further Order of this Court:

- (a) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
- (b) to not grant credit or incur liabilities except in the ordinary course of the Business.

**NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

10. THIS COURT ORDERS that from the date of the present Order and until and including [December 15, 2020], or such later date as this Court may order (the “Stay Period” or the “Stay”), no proceeding or enforcement process in any court or tribunal (each, a “Proceeding”) shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, and any and all Proceedings currently underway against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended, but the Stay shall not apply:

- (a) to the proceeding in Tax Court File No. 2020-1214(GST)G, which for avoidance of doubt shall remain procedurally unaffected by the Stay, but the Stay is applicable to the enforcement of any order made in such proceeding affecting the Monitor, the Business or the Property; and



- (b) to any Proceeding the continuation or commencement of which is consented to in writing by the Applicant and the Monitor or allowed with leave of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

11. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities, as those terms may be understood in their broadest sense (all of the foregoing, collectively being “Persons” and each being a “Person”) against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH RIGHTS**

12. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

**CONTINUATION OF SERVICES**

13. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal

payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

**NON-DEROGATION OF RIGHTS**

14. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

**PROTOCOL**

15. THIS COURT ORDERS AND DECLARES that the protocol agreed to on October 27, 2020 among the Applicant, the Canada Revenue Agency (the “CRA”) and the Monitor and appended as a confidential appendix to the Supplement to the Monitor’s First Report dated October 27, 2020 (the “Protocol”) is hereby approved.

16. THIS COURT ORDERS that (i) the Protocol is hereby sealed from the public record until further order of this Court, and (ii) no party to the Protocol shall disclose to any Person all or any portion of the Protocol which shall be confidential information among the Applicant, the CRA and the Monitor, unless (a) the parties thereto agree to such disclosure in advance and in writing, (b) subject to prior notice to the other parties which notice shall provide an opportunity to seek protective relief, disclosure is required by a party in order to satisfy any legal or regulatory requirement, or (c) upon further Order of this Court.

17. THIS COURT ORDERS that the Protocol shall not be amended, restated or supplemented, except with the written consent of the Monitor, the Applicant and the CRA, or further Order of this Court.

18. THIS COURT ORDERS that the Protocol and all monitoring and control measures described therein shall automatically terminate on the earlier of: (i) the mutual agreement of the Monitor, the Applicant and the CRA to terminate the Protocol; (ii) the termination of the CCAA

Proceedings and Deloitte's discharge as Monitor; or (iii) further Order of this Court providing for the termination of the Protocol.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations (including, but not limited to Proceedings arising from section 323 of the ETA), until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

20. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$100,000, as security for the indemnity provided in paragraph 16 of this Order. The Directors' Charge shall have the priority set out in paragraph 27 herein.

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 16 of this Order.

**APPOINTMENT OF MONITOR**

23. THIS COURT ORDERS that Deloitte Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicant in its preparation of the Applicant's cash flow statements;
- (d) advise the Applicant as to the herein proceedings, including the eventual formulation of a plan of arrangement or compromise;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

25. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

28. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order or the Protocol, save and except for any gross negligence or wilful misconduct on its part. Nothing in

this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant incurred in respect of these proceedings or attendant matters both before and during the period for which this Order is effective, and the Applicant is further hereby authorized to pay to the Monitor and counsel to the Applicant, retainers in the amount of \$50,000 for the former and \$40,000 for the latter, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

30. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel, which for clarity includes all Applicant's counsel such as restructuring counsel and tax counsel, shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$300,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order, and both in respect of these proceedings and proceedings in respect of any tax assessment or reassessment or similar proceedings. The Administration Charge shall have the priority set out in paragraph 27 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

31. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$300,000); and

Second – Directors' Charge (to the maximum amount of \$100,000).

32. THIS COURT ORDERS that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the

Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

33. THIS COURT ORDERS that the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.

34. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Charges unless the Applicant also obtains the prior written consent of the beneficiaries of the Charges, or further Order of this Court.

35. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances,

transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

36. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

### **SERVICE AND NOTICE**

37. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail (national edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

38. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**E-Service Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the E-Service Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the E-Service Protocol, service of documents in accordance with the E-Service Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the E-Service Protocol with the following URL: [insolvencies.deloitte.ca/en-ca/ExpressGoldRefiningLtd].

39. THIS COURT ORDERS that if the service or distribution of documents in accordance with the E-Service Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier,



personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

40. THIS COURT ORDERS that except to the extent incompatible with paragraphs 33 to 35 hereof, due to the COVID-19 pandemic and save Court instructions, the *Consolidated Notice to the Profession, Litigants, Accused Persons, Public and the Media* dated May 13, 2020, as amended (the "**Consolidated Notice**"), the text of which is available at [ontariocourts.ca/scj/notices-and-orders-covid-19/consolidated-notice], and the guidelines set out on the *Changes to Commercial List Operations in light of COVID-19* available at [ontariocourts.ca/scj/changes-to-commercial-list-operations-in-light-of-covid-19], as both may be amended or supplemented from time to time, shall apply to the herein proceeding.

#### **GENERAL**

41. THIS COURT ORDERS that the Applicant or the Monitor may apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

42. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

43. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

44. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

45. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

OCT 28 2020

PER / PAR:



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

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36

AND IN THE MATTER OF A COMPROMISE OR ARRANGEMENT OF  
EXPRESS GOLD REFINING LTD.

27 Oct 20

The Order shall go on an unopposed basis as per the draft filed and signed.  
It has the Monitor's support.  
I have reviewed the draft with counsel. The provisions in the draft are fair and  
reasonable. The confidentiality terms meet the Sierra Club criteria.  
The stay extension meets the required legal test.



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced in TORONTO

**SECOND AMENDED AND RESTATED INITIAL  
ORDER**

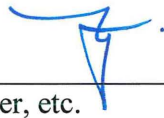
**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
Toronto, Ontario M5G 1V2  
Fax: 416-597-6477

**Mario Forte** (LSO #27293F)  
Tel: 416-597-6477  
Email: [forte@gsnh.com](mailto:forte@gsnh.com)

**Joël Turgeon** (Member of the Bar of Quebec,  
Ontario Student-at-Law)

Lawyers for the Applicant, Express Gold Refining Ltd.

This is **Exhibit "B"** to the affidavit of Atef Salama sworn before me via Zoom this 3<sup>rd</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

Joël Turgeon

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) MONDAY, THE 8<sup>th</sup>  
 )  
JUSTICE McEWEN ) DAY OF MARCH, 2021  
 )

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
(the "**CCAA**")

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF EXPRESS GOLD REFINING LTD.  
(the "**Applicant**")

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**ORDER**  
**(extension of stay period, approval and sealing of amended monitoring protocol,  
approval of monitor's fees and activities)**

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THIS MOTION by the Applicant pursuant to the CCAA was heard before me on March 8, 2021 at 330 University Avenue, Toronto, by videoconference due to the COVID-19 pandemic.

ON READING the materials filed including the affidavit of Atef Salama sworn March 3, 2021 and the exhibits thereto (the "**Salama Affidavit**"), and on reading the third report (the "**Third Report**") of Deloitte Restructuring Inc. in its capacity as court-appointed monitor (in such capacity, the "**Monitor**"), and on hearing the submissions of counsel for the Applicant, the Monitor, and such other counsel as were present as may be indicated on the counsel slip, no one else appearing despite being served as further appears from the affidavit of service, filed:

**SERVICE**

1. THIS COURT ORDERS that the time for service of the motion record in respect of this motion and the Third Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

## **EXTENSION**

2. THIS COURT ORDERS that the “Stay Period” defined in the Second Amended and Restated Initial Order made by this Court on October 27, 2020 in this file is hereby extended to and including June 11, 2021.

## **PROTOCOL**

3. THIS COURT ORDERS that the amended protocol (the “**Amended Monitoring Protocol**”) agreed to on March 1, 2021 among the Applicant, the Canada Revenue Agency and the Monitor and appended to the confidential supplement (the “**Confidential Supplement**”) to the Third Report is hereby approved.

4. THIS COURT ORDERS that the Confidential Supplement and the Amended Monitoring Protocol are hereby sealed from the public record until further court order and that paragraphs 16, 17 and 18 of the second amended and restated initial order made in this file by McEwen J. on October 27, 2020 hereby apply to the Amended Monitoring Protocol as though named therein.

## **APPROVAL OF MONITOR’S FEES AND ACTIVITIES**

5. THIS COURT ORDERS that the first report of the Monitor dated October 18, 2020 as supplemented on October 27, 2020, the second report of the Monitor dated December 10, 2020, and the Third Report, as well as the activities of the Monitor described therein, are hereby approved, provided, however, that only the Monitor in its personal capacity and only with respect to its own personal liability shall be entitled to rely upon or utilize in any way such approval.

6. THIS COURT ORDERS that the professional fees and disbursements of the Monitor and its independent legal counsel, Dentons LLP, as set out in the Fee Affidavits (term defined in the Third Report), are hereby approved.

7. THIS COURT ORDERS that the Applicant pay all such fees and disbursements from available funds.

**GENERAL**

8. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

9. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

10. This order is effective as of its date and does not need to be entered.



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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF EXPRESS GOLD REFINING LTD.**

8 March 21

The order shall go as per the draft filed and signed.  
No one opposes, and the Monitor supports the Order. There is sufficient cash flow and the remainder of the terms, including the activities/fees and protocol, are fair and reasonable.  
A sealing order shall also go as the Sierra Club criteria have been met.



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
Proceeding commenced in TORONTO**

**ORDER  
(extension of stay period, approval and sealing of  
amended monitoring protocol, approval of monitor's  
fees and activities)**

**GOLDMAN SLOAN NASH & HABER LLP**  
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**Mario Forte** (LSO #27293F)  
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**Joël Turgeon** (LSO #80984R)  
Tel: (416) 597-6486  
Email: [turgeon@gsnh.com](mailto:turgeon@gsnh.com)

Lawyers for the Applicant, Express Gold Refining Ltd.



This is **Exhibit "C"** to the affidavit of Atef Salama sworn before me via Zoom this 3<sup>rd</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

SOËL TURGEON

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  
(the "CCAA")

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF EXPRESS GOLD REFINING LTD.  
("EGR")

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**AFFIDAVIT OF ATEF SALAMA  
(sworn December 9, 2020)**

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I, Atef<sup>1</sup> Salama, of the City of Toronto, in the Province of Ontario, **MAKE OATH  
AND SAY:**

1. I am EGR's Vice-President and have been since 2001. As such I have personal knowledge of the facts and matters hereinafter deposed to save and except where the same are stated to be based upon information or belief, and where so stated I verily believe the same to be true.
2. This affidavit is in support of EGR's motion for an extension of these CCAA proceedings.

**I. OVERVIEW OF THESE PROCEEDINGS**

3. EGR's resort to relief under the CCAA was necessary due to (i) the Canada Revenue Agency ("CRA")'s refusal to pay EGR's net tax refunds, including input tax credits under the *Excise Tax Act*, since August 2018, and (ii) reassessments in excess of \$189,000,000 issued to EGR on July 28, 2020 (the "**2020 Reassessments**").

<sup>1</sup> Sometimes spelled "Atif".

4. The 2020 Reassessments are being challenged by EGR (the “**Tax Litigation**”) in the Tax Court of Canada (“**Tax Court**”). However, they are enforceable notwithstanding contestation,<sup>2</sup> and on or around October 8, 2020, CRA announced it would commence enforcement measures on October 15, 2020.
5. On October 15, 2020, Hainey J. made an initial order in respect of EGR (the “**Initial Order**”), a copy of which is **Exhibit “A”** hereto. On October 19, 2020, at the comeback hearing, McEwen J. made the first amended and restated initial order. On October 27, 2020, McEwen J. made the second amended and restated initial order (the “**SARIO**”), a copy of which is **Exhibit “B”** hereto. Deloitte Restructuring Inc. is the monitor in these CCAA proceedings (in such capacity, the “**Monitor**”).
6. This is not an operational restructuring. But for CRA’s refusal to pay EGR’s net tax refunds and the 2020 Reassessments, EGR would be solvent and its business would be profitable. An application under the CCAA was necessary to maintain a *status quo* and allow EGR to obtain, as a first milestone of a restructuring, a decision on the merits in the Tax Litigation.
7. Hence, the SARIO provides:
  - a. that EGR remains, under a stay of proceedings, in possession of its business and property and is entitled to pay its normal business expenses and to satisfy its creditor obligations whether incurred before or after the making of the Initial Order,<sup>3</sup>
  - b. that a stay of proceedings applies but the Tax Litigation may continue,<sup>4</sup> and
  - c. for the court’s approval and sealing of a protocol agreed to on October 27, 2020 among EGR, CRA and the Monitor (the “**Protocol**”), further discussed below.<sup>5</sup>

<sup>2</sup> I am referred to the [Excise Tax Act](#), s. 315.

<sup>3</sup> I am referred to paragraphs 4 to 9 of the SARIO.

<sup>4</sup> I am referred to paragraph 10 of the SARIO.

<sup>5</sup> I am referred to paragraphs 15 to 18 of the SARIO.

8. CRA is the principal party immediately affected by the SARIO (although there are many parties aside from EGR that may be affected by CRA's actions prior to and during this proceeding, as discussed below).

## **II. ACTIONS SINCE LAST INITIAL ORDER EXTENSION**

9. The last initial order extension was made through the SARIO. Since that time, EGR has notably:
  - a. worked with the Monitor with respect to the implementation of the Protocol, including with the involvement of CRA,
  - b. continued operating its business while complying with COVID-19 legal requirements and best practices, and
  - c. continued managing the Tax Litigation.
10. Each of the above is discussed below.

### **A. Implementation of the Protocol**

- i. Background on the necessity of the Protocol
11. From January 2018 to July 2018, EGR claimed monthly net tax refunds in the range of approximately \$6.4 million to over \$9 million. The amount EGR so claims is always multiples higher than EGR's total profits for the same period.
12. Prior to the Protocol, CRA was withholding payment of any net tax refunds due to EGR in respect of August 2018 and later periods, even to the extent that the 2020 Reassessments have allowed certain refunds, by setting off those allowed refunds against the debt raised in the 2020 Reassessments. CRA confirmed this to EGR's restructuring counsel.
13. In other words, every time EGR paid GST/HST which it was entitled to be repaid (e.g., GST/HST on legal fees, GST/HST paid on expenses incurred in furtherance of its business such as scrap gold, office supplies, etc.), CRA refused to remit the corresponding net tax refunds to EGR. For obvious reasons, if this was allowed to continue, EGR's financial position would be continuously eroded until eventually it

would be prevented from attempting any restructuring and obtaining determination of its case in Tax Court.

14. In addition, CRA's set-offs cause harm to EGR's suppliers with respect to which CRA has made no allegation of wrongdoing. This is because EGR and certain such suppliers operate under an agreement that EGR pays the GST/HST on its purchases of scrap gold only when it receives the corresponding tax refund. Since CRA sets off the refunds, EGR cannot pay the GST/HST to the suppliers. Meanwhile, those suppliers were obliged under the statutes to remit or otherwise deal with the GST/HST amount "out of pocket". This causes three main issues: **(i)** it potentially creates claims by such suppliers against EGR, which would add to EGR's dire situation, **(ii)** it disincentives new suppliers from doing business with EGR, which also adds to its difficulties, and **(iii)** it presumably places a large cash-flow burden on those suppliers who find themselves to be "innocent bystanders" of CRA's actions.
15. The Protocol was developed and implemented at EGR's initiative with input from CRA and the Monitor, to address, among other things, those issues of set-off, transparency and harm to adversely affected suppliers. In combination with the stay of proceedings, the Protocol is intended to allow EGR to receive, in accordance with the statutes, its net tax refunds payable in respect of periods postdating the stay of proceedings.
16. At this early stage, EGR has yet to receive net tax refunds pursuant to the Protocol. This is due to the timing of its GST/HST filing and the recent implementation of the Protocol itself. EGR will look forward to receipt of its net tax refunds over the near term and throughout the term of the Protocol as these are essential to EGR remaining in a position to effectively carry on its business.

ii. Implementation

17. The Protocol is subject to a sealing order and confidentiality terms. For purposes hereof, I report that the Protocol has been implemented and that EGR is complying with its terms as noted in the Monitor's report filed in support of this motion. The impact of COVID-19 on the Protocol is discussed below.

**B. Continuance of business and impact of COVID-19**

18. In accordance with this court's orders in these CCAA proceedings, EGR has continued its business operations.
19. Around November 22, 2020, i.e. approximately one month following the SARIO, the Toronto and Peel regions were put under a form of temporary lockdown by the government of Ontario.
20. EGR has concluded with assistance from its legal counsel that it operates a "business that may open" in accordance with the regulations currently in place. For the duration of the temporary lockdown, EGR will continue to take all necessary steps to ensure it operates in accordance with the applicable regulations. I understand that the Monitor and its counsel have analysed the relevant directives and regulations and concur that EGR's business may remain open.
21. COVID-19 obviously still has an impact on EGR's business, however, as discussed below.
  - i. Diminished business
22. I understand that the details and figures regarding EGR's business and its decline since the Initial Order will be set out in the report of the Monitor filed in support of this motion. The decline can in fact be traced back to 2019. While no one cause can be isolated, I believe the following factors are at play.
  - a. **The CCAA filing itself** – restructuring costs have affected the business' profitability. Also, the potentially negative appearances and uncertainty associated with a creditor protection filing may have impacted the business.
  - b. **COVID-19 restrictions** – self-explanatorily, those have caused decreased traffic to the business since March 2020.
  - c. **The 2020 Reassessments and CRA's actions regarding EGR's net tax refunds** – as seen above, this has had negative consequences for EGR directly but also indirectly through the financial harm and business disincentives it also

imposes on EGR's suppliers. This may be alleviated in part by the Protocol in respect of reporting periods postdating the stay of proceedings but remains in respect of reporting periods predating the stay.

- d. **CRA has made demands on EGR's suppliers** – I understand that CRA has taken steps to obtain payment from EGR's suppliers with respect to amounts of GST/HST collectable by such suppliers and that such amounts are referable, in whole or in part, to GST/HST that EGR has been unable to pay those suppliers as a result of CRA's set-off. This compounds the financial harm, business disincentives and potential adverse claims issues discussed above. If CRA paid EGR's corresponding net tax refunds, EGR would be able to pay its suppliers who in turn would be able to pay CRA. The net result would be neutral for EGR and CRA (no financial loss or gain), positive for the applicable suppliers (whose liability to CRA could be satisfied), and this would cure the issues mentioned. EGR has discussed this adverse state of affairs with the Monitor and hopes to address this through these proceedings on a mutually-agreeable basis.

ii. Impact of COVID-19 on the implementation of the Protocol

23. The November temporary lockdown measures, in combination with EGR's and the Monitor's own internal COVID-19 policies, have necessitated discussions on the possible adaptation of the Protocol to the circumstances.
24. Among other things (and independently from the Protocol), CRA queried whether EGR was a business that could remain open. As discussed above, EGR and the Monitor agree that the answer to this question is, yes.
25. The Monitor's development and implementation of proposed amendments to the Protocol to address any issues in respect of the temporary lockdown have the full support of EGR. We are hopeful such amendments will be accepted by CRA as necessary and appropriate accommodations.

**C. Status of the Tax Litigation**

26. EGR filed with the Tax Court its Fresh as Amended Notice of Appeal on September 11, 2020. EGR consented to the Respondent having until January 29, 2021 to file its reply, a pleading that effectively sets out its case. This extension was required by the Respondent and consented to by EGR on the condition that the Respondent agreed to case management, proceeding with full disclosure of documents (as opposed to partial disclosure), and that documents be exchanged by March 31, 2021.
27. The parties are jointly requesting that the matter be assigned for case management to assist in the efficient conduct of the appeal. They will then exchange their lists of documents and documents in their possession relevant to the appeal by March 31, 2021. The parties have yet to determine dates for examinations for discovery, but tax counsel expects them to be scheduled for spring 2021.
28. EGR continues to work with tax counsel and CRA to expedite the Tax Litigation as much as possible while ensuring it can put its best foot forward. EGR is also considering what steps within the CCAA proceedings may be taken to expedite and facilitate a timely hearing or resolution of issues as might arise in the Tax Litigation, with a view to benefitting all stakeholders.
29. Notwithstanding the current accommodations in the tax proceedings, EGR must remain mindful that its business is being placed in very difficult financial circumstances by these CCAA proceedings. They are expensive and create uncertainty in the marketplace for EGR and its customers and suppliers until clarity and the effectiveness of the Protocol can be accepted and understood by EGR's stakeholders. Moreover, addressing the ongoing activities CRA has taken against EGR's suppliers in respect of the very claims for which EGR might expect to receive net tax refunds and from which refunds such suppliers could then remit GST/HST would be a substantially favourable correction and one in keeping with the spirit and intent of the Protocol.



### III. NEED FOR CONTINUED CCAA RELIEF

#### A. Stay of proceedings and stay of D&O claims


30. The need for extension of the stay provisions, with the caveat for the Tax Court proceeding, is self-explanatory considering the \$180 million 2020 Reassessments are otherwise enforceable notwithstanding contestation. The continuation of the stay is intended to maintain the *status quo* so that EGR may obtain, as a first milestone of its restructuring, a decision on the merits of its case in the Tax Litigation.

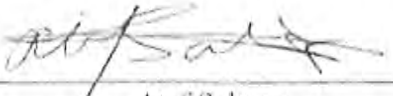
#### B. Protocol

31. The SARIO provides that the Protocol terminates automatically upon termination of these CCAA proceedings. The Protocol is an integral part of EGR's achieving the first milestone of its restructuring, and so EGR requests the continuation of these proceedings to allow the Protocol to remain within this court's jurisdiction to enforce, as the case may be.

32. With the above in place, EGR has and will continue to act with due diligence and good faith with respect to the Tax Litigation, its business and operations, and its relationship with CRA more generally.

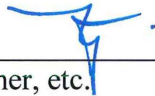
SWORN BEFORE ME via Zoom at the City of Toronto, in the Province of Ontario, this 9<sup>th</sup> day of December, 2020 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*

  
\_\_\_\_\_  
Commissioner for taking affidavits  
(present at Toronto at the time of swearing)

  
\_\_\_\_\_  
Atef Salama  
(present at Toronto at the time of swearing)

**Jessica Josephine Rose Gahtan,**  
**a Commissioner, etc.,**  
**Province of Ontario,**  
**while a Student-at-Law.**  
**Expires November 6, 2023**

This is **Exhibit "D"** to the affidavit of Atef Salama sworn before me via Zoom this 3<sup>rd</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

Joel Turgeon

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  
(the "CCAA")

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF EXPRESS GOLD REFINING LTD.  
("EGR")

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**AFFIDAVIT OF ATEF SALAMA  
(sworn March 3, 2021)**

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I, Atef<sup>1</sup> Salama, of the City of Toronto, in the Province of Ontario, **MAKE OATH  
AND SAY:**

1. I am EGR's Vice-President and have been since 2001. As such I have personal knowledge of the facts and matters deposed in this affidavit save where the same are stated to be based upon information or belief, and where so stated I verily believe the same to be true.
2. This affidavit is in support of EGR's motion for an extension of these CCAA proceedings, approval and sealing of the Amended Monitoring Protocol (defined below), and approval of the Monitor (defined below)'s fees and activities.

**I. OVERVIEW OF THESE PROCEEDINGS**

3. EGR is in the precious metal (predominantly, gold) refining business.
4. EGR's resort to relief under the CCAA was necessary due to **(i)** the Canada Revenue Agency ("CRA")'s refusal to pay EGR's net tax refunds, including input tax credits

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<sup>1</sup> Sometimes spelled "Atif".

- under the *Excise Tax Act*, since August 2018, and (ii) reassessments in excess of \$189,000,000 issued to EGR on July 28, 2020 (the “**2020 Reassessments**”).
5. The 2020 Reassessments are being challenged by EGR (the “**Tax Litigation**”) in the Tax Court of Canada (“**Tax Court**”). However, they are enforceable notwithstanding contestation,<sup>2</sup> and on or around October 8, 2020, CRA announced it would commence enforcement measures on October 15, 2020.
  6. The orders made so far in this proceeding are:
    - a. the October 15, 2020 initial order made by Hainey J.,
    - b. the October 19, 2020, amended and restated initial order made at the comeback hearing by McEwen J.,
    - c. the October 27, 2020, second amended and restated initial order (the “**SARIO**”) made by McEwen J., of which a copy is **Exhibit “A”** hereto, and
    - d. the December 14, 2020 order of McEwen J. extending to March 15, 2021 the “**Stay Period**” defined in the SARIO.
  7. This is not an operational restructuring. But for CRA’s refusal to pay EGR’s net tax refunds and the 2020 Reassessments, EGR would be solvent and its business would be profitable. An application under the CCAA was necessary to maintain a *status quo* and allow EGR to obtain, as a first milestone of a restructuring, a decision on the merits in the Tax Litigation.
  8. Hence, the SARIO provides:
    - a. that EGR remains, under a stay of proceedings, in possession of its business and property and is entitled to pay its normal business expenses and to satisfy its creditor obligations whether incurred before or after the making of the initial order,<sup>3</sup>

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<sup>2</sup> I am referred to the *Excise Tax Act*, s. 315.

<sup>3</sup> I am referred to paragraphs 4 to 9 of the SARIO.

- b. that a stay of proceedings applies but the Tax Litigation may continue,<sup>4</sup> and
- c. for the court's approval and sealing of a protocol (the "**Protocol**") agreed to on October 27, 2020 among EGR, CRA and the Deloitte Restructuring Inc. as monitor in the herein proceedings (in such capacity, the "**Monitor**"), further discussed below.<sup>5</sup>

9. This motion seeks an extension of the Stay Period to and including June 11, 2021 (3 months).

## II. ACTIONS SINCE LAST INITIAL ORDER EXTENSION

10. Since the last extension made on December 14, 2020, EGR has notably:

- a. worked with the Monitor with respect to the implementation of the Protocol, including with the involvement of CRA,
- b. negotiated certain amendments to the Protocol with the Monitor and CRA (the "**Amended Monitoring Protocol**"), the particulars of which are set out in the confidential supplement (the "**Confidential Supplement**") to the Monitor's third report, to be filed separately in support of this motion (the "**Third Report**"),
- c. continued operating its business while complying with COVID-19 legal requirements and best practices, and
- d. continued managing the Tax Litigation.

11. Each of the above is discussed below.

### A. Implementation and adjustment of the Protocol

#### i. Background on the necessity of the Protocol

12. I provided such background in my prior affidavit sworn December 9, 2020 in support of the last motion for extension. I attach hereto a copy of that affidavit, without exhibits, as **Exhibit "B"**.

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<sup>4</sup> I am referred to paragraph 10 of the SARIO.

<sup>5</sup> I am referred to paragraphs 15 to 18 of the SARIO.

13. In a nutshell, the Protocol was proposed, developed and implemented at EGR's initiative with input from CRA and the Monitor to, among other things and in combination with the stay of proceedings, allow EGR to receive, in accordance with the applicable tax statutes, its net tax refunds payable in respect of periods postdating the stay of proceedings.
14. The Protocol, as may be amended by common accord of the parties, is subject to a sealing order and confidentiality terms. I will not discuss its terms but will update the court on its implementation and the developments towards the Amended Monitoring Protocol.
  - ii. Implementation and adjustment
15. Since the SARIO, the Protocol has been implemented and is ongoing. The Monitor is performing its role thereunder, including at EGR's premises. I understand that this will be discussed in further details in the Confidential Supplement.
16. On January 20, 2021, EGR's lawyers, the Monitor and its lawyers, and CRA and its lawyers (the Ministry of Justice), held a call originally planned for discussion of possible amendments to the Protocol in light of recent COVID-19 lockdown developments.
17. During that call, CRA stated they had identified a situation which, in their position, raised issues under the Protocol. This came as a surprise to EGR and the Monitor. The parties thereafter exchanged memoranda including additional information and respective positions. Briefly, the issue is as follows.
  - a. Between February 3 and October 2, 2020 (i.e. before this CCAA proceeding and before the Protocol), EGR conducted gold and silver refining business (the "**Transactions**") with a corporation (the "**Supplier**").
  - b. Due to the particular timing of the invoices issued by the Supplier, EGR claimed input tax credits for GST/HST payable to the Supplier on the Transactions in its November 2020 tax filings.<sup>6</sup>

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<sup>6</sup> For context, very briefly, I am advised of the following, which was also my understanding: EGR's refining business is generally treated as a buy/sell of gold. EGR must thus pay GST/HST on its "purchase" of unrefined gold. It is generally entitled to recovery of that GST/HST as input tax credits because the unrefined gold is acquired for use in commercial activities. However, under the ETA, a sale of precious metals is a "zero-rated supply", meaning EGR does not charge/collect GST/HST on its "sales" of pure gold. Thus, EGR is in a constant large monthly

- c. CRA raised issues with the Transactions, which I understand will be discussed in the Confidential Supplement.
  - d. I understand that CRA believes EGR should not have claimed, as it did, input tax credits in respect of the Transactions (although CRA has indicated that these input tax credits are being reviewed by CRA). I disagree, including for the following reason: there is a formal procedure to claim GST/HST refunds under the *Excise Tax Act* and a limitation period to do so.
  - e. From the moment EGR reasonably believes, as it does, that there is an input tax credit available, it has to protect this potential asset by reporting it to CRA, as the tax statutes require. EGR strongly believes in fact and in law that GST/HST is payable on the Transactions and that EGR is entitled to correspondent input tax credits, and accordingly filed its November 2020 claiming the same. Such procedural, mechanical compliance was done in good faith for the benefit of all of EGR's stakeholders – a central element in this CCAA proceeding.
18. Following an exchange of memoranda among the parties, CRA, EGR and the Monitor agreed on the Amended Monitoring Protocol. The changes reflect the middle ground struck among the parties to address the above situation and similar ones, if any, going forward.
19. EGR seeks on this motion that the Amended Monitoring Protocol be made subject to the orders made at paragraphs 16 to 18 of the SARIO in respect of the original Protocol, including for confidentiality and sealing from the public record. EGR also seeks the sealing of the Confidential Supplement to the Third Report. I believe this is appropriate in the circumstances because those documents contain sensitive information, notably for CRA.

**B. State of the business**

20. EGR continues its business operations in accordance with this court's orders.
21. Around November 22, 2020, i.e. approximately one month following the SARIO, the Toronto and Peel regions were put under a form of temporary lockdown by the government of Ontario. Lockdown measures continue to be in force, and EGR continues to operate its business as a "business that may open" in accordance with the regulations in place, as further discussed in my December 9, 2020 affidavit (Exhibit "B"). Since and for the duration of the temporary lockdown, EGR has and will, in cooperation with the Monitor, continue to take all necessary steps to ensure it operates in accordance with the applicable regulations.
22. Beyond COVID-19, however, I believe that the additional issues and factors noted in paragraph 22 of my December 9, 2020 affidavit (Exhibit "B") continue to adversely affect the business. I refer to that paragraph instead of restating it here. I understand that the details and figures regarding EGR's business since the latest Monitor's report will be set out in the Third Report.
23. Notwithstanding such decline in business, EGR generates revenues. I believe EGR will be able to support its operations, the Tax Litigation, the herein proceeding and the Amended Monitoring Protocol for the duration of the extension sought, as I understand will more fully appear from the Third Report.

**C. Status of the Tax Litigation**

24. The only notable development in the Tax Litigation since the last extension is that EGR was served, on January 29, 2021, with the Crown's Reply.
25. Otherwise, the upcoming material steps in the Tax Litigation continue to be as noted in paragraphs 26 to 29 of my December 9, 2020 affidavit (Exhibit "B"). EGR and the Monitor are considering what steps within the CCAA proceedings may be taken to expedite and facilitate a timely hearing or resolution of issues as might arise in the Tax Litigation, with a view to benefitting all stakeholders.



**III. NEED FOR CONTINUED CCAA RELIEF**

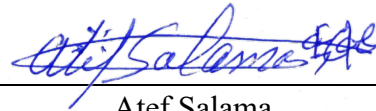
26. The need for extension of the stay provisions is self-explanatory considering the \$180 million 2020 Reassessments are otherwise enforceable notwithstanding contestation. The continuation of the stay is intended to maintain the *status quo* so that EGR may obtain, as a first milestone of its restructuring, a decision on the merits of its case in the Tax Litigation.
27. The SARIO provides that the Protocol terminates automatically upon termination of these CCAA proceedings, and so EGR requests the continuation of these proceedings to allow the Amended Monitoring Protocol to remain within this court's jurisdiction to enforce, as the case may be.
28. With the above in place, EGR has and will continue to act with due diligence and good faith with respect to the Tax Litigation, its business and operations, and its relationship with CRA more generally.

SWORN BEFORE ME via Zoom at the City of Toronto, in the Province of Ontario, this 3<sup>rd</sup> day of March, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



\_\_\_\_\_  
Commissioner for taking affidavits  
(present at Toronto at the time of swearing)

Joël Turgeon  
LSO No. 80984R



\_\_\_\_\_  
Atef Salama  
(present at Toronto at the time of swearing)

This is **Exhibit "E"** to the affidavit of Atef Salama sworn before me via Zoom this 3<sup>rd</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

SOËL TURGEON

Court File No.: \_\_\_\_\_

**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 EXPRESS GOLD REFINING LTD.  
(the "Applicant")

**AFFIDAVIT OF ATEF SALAMA  
(sworn October 14, 2020)**

I, Atef<sup>1</sup> Salama, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Vice-President of the Applicant, Express Gold Refining Ltd. ("EGR"), and have been since 2001, and as such I have personal knowledge of the facts and matters hereinafter deposed to save and except where the same are stated to be based upon information or belief, and where so stated I verily believe the same to be true.

2. I graduated from the University of Toronto in 1998 with a degree in computer engineering. I also obtained a Masters of Engineering in Telecommunication, having graduated in 2001. Since 1999, I have been a licensed Engineer with Professional Engineers Ontario.

3. This Affidavit is sworn in support of an application by EGR for an order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), to preserve and protect the business and undertakings of EGR.

**OVERVIEW**

4. As will be discussed in greater detail below, EGR is a family business that was established in 1994 by my father. Its primary business is refining gold. It enjoys a good

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<sup>1</sup> Sometimes spelled "Atif".

reputation among its suppliers and customers, and, but for the disputes with the Canada Revenue Agency (the “CRA”), which will be described in detail, would be a solvent and successful business with no need for the protections afforded by these proceedings.

5. EGR employs 14 people and operates a specialized facility in downtown Toronto. It performs various refining functions in that facility, and also arranges for the final stages of refining to be conducted by third-party refiners offsite. Its customer base is comprised primarily of jewellery manufacturers, wholesalers, importers/exporters, scrap gold consolidators/resellers, cash-for-gold buyers, prospectors and miners who seek to have their unrefined gold converted to pure gold so it can be used in industry, manufacturing, trade, investment or speculation.

6. EGR has historically viewed its refining activities as a service it provides to its customers. It typically earns 1 to 2% of the value of the gold refined as, in effect, fees for such refining services. However, despite that historical view and the economic reality that EGR’s refining activities are effectively services, I understand that, further to a CRA ruling, under Part IX of the *Excise Tax Act* (R.S.C., 1985, c. E-15) (the “ETA”), which governs the Goods and Services Tax/Harmonized Sales Tax (“GST/HST”), the relevant transactions are treated as a purchase of unrefined gold and a sale back of refined gold for GST/HST purposes.

7. This “buy/sell” treatment of gold refining transactions has important GST/HST implications. I understand that supplies of unrefined gold are subject to GST/HST, but supplies of refined gold are generally not. As a result, EGR pays GST/HST on the unrefined gold it is considered to have purchased from its customers, but does not collect GST/HST on the refined gold it is considered to have sold back to its customers. Since the GST/HST EGR pays is refundable in the form of input tax credits (“ITCs”), EGR is in a constant, large GST/HST refund position.

8. EGR lobbied against the buy/sell treatment with the CRA and the Department of Finance on the basis that it would have negative cash flow implications for EGR and would increase tax leakage risk for the CRA. With respect to the tax leakage risk, EGR was concerned that customers could potentially collect the GST/HST payable in connection to transactions with refiners like EGR, and then abscond with the GST/HST without remitting it to the CRA. EGR advocated for several alternative approaches to address those problems.

9. However, the approaches that EGR advocated for were rejected by the CRA and the Department of Finance. The buy/sell treatment of EGR's refining activities was confirmed in a ruling by the CRA Rulings Directorate in 2013 (the "**2013 Ruling**").

10. EGR has been under constant scrutiny from the CRA for over two decades, including two full-blown, multi-year audits from 2004 to 2013. EGR was fully cooperative with the CRA and devoted considerable resources to those audits. While the CRA proposed several substantial adjustments at various times during the audits, the audits ended without any material unrecoverable GST/HST being assessed. During those audits, the CRA withheld EGR's GST/HST refunds for months and years at a time, causing significant cash flow problems to EGR. However, the CRA ultimately paid the refunds, as it was obliged to do.

11. In September 2018, the CRA again stopped paying GST/HST refunds to EGR and commenced a GST/HST audit of EGR's reporting periods beginning in June 2016 to October 2018.

12. That audit spiralled out of control and ultimately resulted in this application becoming necessary. The CRA made inflammatory accusations of wrongdoing against EGR, but has refused to provide any evidentiary basis for those allegations. The only context that the CRA has provided for its allegations relate to its conclusions that the volume and purity level of unrefined gold purchased by EGR differed from certain volume and purity levels that the CRA considers benchmarks for the gold market in the Greater Toronto area. The CRA has never explained the details of the market it considers EGR to participate in. This matter is being challenged in the Tax Court of Canada.

13. I am confident that EGR will be able to disprove the CRA's allegations in the Tax Court of Canada. EGR has never participated in any wrongdoing.

14. However, EGR urgently needs this Court's protection because, the CRA has issued assessments totaling approximately \$180 million, rendering EGR insolvent and EGR has been contacted by CRA Collections officials threatening to take enforcement action forthwith.

15. Perhaps more importantly for purposes of this application, the CRA has also failed to refund any of the GST/HST that EGR has paid to its customers or any other commercial

suppliers from the August 2018 reporting period onwards. To date, the CRA has withheld approximately \$37 million of GST/HST refunds from EGR. EGR requires such refunds to pay its suppliers and operate its business – as discussed, it generally earns gross revenue of 1 to 2% of the value of the unrefined gold that it refines for its customers, but it is generally required to pay 13% in GST/HST to its customers and 13% GST/HST to its non-customer commercial suppliers. It is simply untenable for the CRA to require EGR to pay GST/HST on an ongoing basis but to refuse to refund that GST/HST to EGR.

16. It is not the purpose of this restructuring to compromise or seek to otherwise impair the ordinary course customers and suppliers of the business, but rather to provide a platform to accelerate the process to a hearing or resolution of the issues that have been alleged by CRA in the appropriate forum.

## **BACKGROUND**

### **(a) EGR's Business and Ownership**

17. EGR is a corporation duly incorporated under the laws of Ontario. It is a family-owned and operated business and the current iteration of the Salama family's involvement in the precious metals business that spans back four generations.

18. My parents immigrated to Canada from Egypt with me and my two brothers in July 1984, when I was 7 years old. My father is a third-generation precious metal dealer and jeweller, as well as a lawyer in Egypt

19. In April 1991, my father developed an interest in refining methods for precious metal and his interest extended into research and experimentation. EGR was incorporated in 1994 as a result of these activities.

20. In 2001, the same year that I received my Masters of Engineering, I took over most of the management responsibilities at EGR rather than pursuing a career in telecommunications. My father and my mother continue to be involved in EGR's activities.

21. All of the issued and outstanding shares in EGR are owned by family members through a corporation or the Atef Salama Family Trust.

22. I am the Vice President of EGR and a director. The other officers and directors are Nabil Salama, my father, who is President, and Mary Salama, my mother, who is Secretary.

23. EGR's primary business, which generates the substantial portion of its revenue has been gold refining.<sup>2</sup> A typical refining transaction in EGR's business primarily involves the following steps:

- a) receiving unrefined gold (typically in the form of gold jewelry or bars of melted scrap recycled gold) from a customer;
- b) melting and assaying the unrefined gold to determine the gold content;
- c) consolidating various lots of unrefined gold and forwarding them to a third-party refiner for the final stages of refining to convert the lots into pure gold; and
- d) payment in pure gold, wire, cheque or cash or sale of pure gold to the (often, same) customers.

24. As noted above, I understand that the receiving of unrefined gold from a customer and the transfer back of pure gold are treated as a purchase and sale for purposes of the ETA and that this was confirmed in the 2013 Ruling.

25. While its sales volume has been high, due in part to the high value of gold, EGR's gross profit margin on gold transactions is low (i.e., typically 1-2%) while being consistent with market rates. This margin is what EGR historically considered its "fee" for refining gold. Specifically:

- a) EGR purchased its unrefined gold based on the volume of gold content times the market rate, less a 1-2% discount;
- b) in turn, EGR sold the refined product (i.e., pure gold) at the market price; and

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<sup>2</sup> More specifically, EGR's business also involves three other types of precious metals, silver, platinum and palladium. However, since gold refining is far more important to EGR's business than the refining of those other precious metals, since the dispute with the CRA involves only gold refining transactions, and for the sake of simplicity, gold is the focus of this affidavit.

- c) from that gross margin, EGR had to pay third-party refining fees, operating expenses and income tax.

26. At all relevant times, EGR has dealt with well-established third-party, final refiners, including the Royal Canadian Mint and, primarily, Asahi Refining Canada Limited (“**Asahi Refining**”) to perform the last stages in the refining process: chemical separation of the gold, pouring the pure gold into ingots or bars, and affixing London Bullion Market Association purity seals. Asahi Refining is the Canadian subsidiary of Asahi Holdings, Inc. a publicly traded company on the Tokyo Stock Exchange.

27. EGR also participates in the trading of gold bullion and forward contracts. EGR takes positions for EGR and for its clients based on short and long-term fluctuations in the price of gold, either for hedging purposes or for investment purposes. It buys and sells physical gold bullion on its own account. It takes positions in the gold futures markets using accounts with Asahi Refining, RJ O’Brien, FXDD, as well as Saxo Bank.

28. In connection with both its refining and trading activities, EGR holds deposits, gold bullion (and other precious metals) and forward contracts on behalf of its customers. In connection with its refining business, customers deliver unrefined gold to EGR, as discussed above. The transfer of the unrefined gold is considered a purchase. Once the customer’s gold has been valued, there is a settlement report created and the customer is paid at that time in cash, by wire, or in gold bullion.

29. In the ordinary course, for GST/HST-registered customers, EGR is charged 13% GST/HST on EGR’s purchase of the unrefined gold. EGR claims the GST/HST payable as an ITC and, after receiving the corresponding net tax refund for the ITC a few months later, EGR pays the applicable GST/HST to its customers by cheque or wire transfer to the customer’s account.

30. EGR also stores gold bullion on behalf of several of its customers with which it has a long-standing relationship of trust and, as noted above, takes positions on behalf of several of its long-standing customers in the gold futures markets using EGR’s accounts, either for hedging purposes or for investment purposes. EGR also occasionally holds cash in its accounts with



Asahi Refining, RJ O'Brien, FXDD as well as Saxo Bank on behalf of several of its long-standing customers, to facilitate the trading of gold bullion or gold future contracts.

31. EGR maintains a large transaction volume; however, its profit margins are small. For example, the purchase price for unrefined gold is dictated by the market price for gold times the purity of the recycled precious metal being purchased, less the 1 to 2% margin. Hedging contracts are used to protect against fluctuations in market price as they relate to buy and sell transactions. Unrefined gold purchased from a customer is hedged – for example where EGR accumulates 100 ounces of gold in bullion purchases plus gold content in unrefined gold purchases, then a sale contract is entered into at that time to balance the market fluctuation risks.

32. The business is conducted from a 5200 square foot facility located at 215 Victoria Street in Toronto comprising a dedicated customer area, with 11 customer booths as well as a melt room with 5 induction furnaces, 1 gas torch, 1 large burning oven, 3 x-ray assay machines, 3 wet chemical assay machines, 13 scales, 2 class 3 safes, and multiple desks and computers.

33. EGR enjoys a good reputation with its customers arising from its long history, its trustworthiness and its ability to refine gold in a timely manner. Both myself, my father and my mother are usually at EGR's business premises. Competitors often take two to three days to process a purchase of unrefined gold. At EGR, customers leave with their settlement payment right away. EGR has instantaneous assay machines, although some competitors have acquired similar machines. The combination of instant assay, transparent melting on the premises where customers can witness their gold being processed, and advanced access to pure gold and funds through the business relationship with Asahi, permit EGR to offer the "express" service for which it is known. Over the years, EGR has dealt with over 7000 customers. Its refining customers consist of jewellers, jewellery manufacturers, wholesalers, resellers/consolidators and prospectors and miners.

34. As a Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC") reporting entity, EGR complied (and complies) with strict FINTRAC rules regarding customer identification.

35. EGR verifies that its customers who supply EGR with unrefined gold to be refined and charge EGR GST/HST are duly registered for GST/HST purposes using the CRA's online GST/HST registry.

**(b) The GST/HST Implications of EGR's Business**

36. EGR is a GST/HST registrant under Part IX of the ETA. It has monthly reporting periods under the ETA and therefore files its GST/HST returns on a monthly basis.

37. I understand that EGR's sales of unrefined gold are "taxable supplies" under the ETA, and subject to GST/HST at the full rate applicable in the relevant province (*i.e.*, 13% in Ontario),<sup>3</sup> whereas EGR's supplies of refined gold (*i.e.*, gold with a purity level of at least 99.5% and in ingot or bar form) are "zero-rated",<sup>4</sup> and therefore subject to GST/HST at a rate of 0%.<sup>5</sup>

38. I also understand that GST/HST that is paid to suppliers in the course of a commercial activity gives rise to ITCs,<sup>6</sup> and that when a registrant's ITCs exceed the GST/HST it has collected in a reporting period, it is entitled to a net tax refund from the CRA.<sup>7</sup>

**(c) EGR's Historical Interactions With the CRA**

39. Prior to September 2004, EGR was subject to periodic audits by the CRA to verify EGR's ITC claims. Those audits generally involved EGR providing the CRA with information and documentation to support its ITC claims, and the CRA reviewing such information and documentation without conducting any on-site visits of EGR's premises. Despite those audits, EGR consistently received its net tax refund from CRA within approximately 30 to 45 days of filing each monthly GST/HST return.

40. Between 2004 and 2013, EGR was subject to constant and extensive CRA GST/HST audit activity including two full-scale GST/HST audits spanning multiple years each. EGR was

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<sup>3</sup> See the general taxing provisions contained in subsections 165(1) and (2) of the ETA and the CRA Ruling.

<sup>4</sup> Section 3 of Part IX of Schedule VI and of the ETA and the definition of "precious metal" in section 123 of the ETA.

<sup>5</sup> Subsection 165(3) of the ETA.

<sup>6</sup> Subsection 169(1) of the ETA.

<sup>7</sup> Subsection 225(1) and subsections 228(1) and (3) of the ETA.

always fully cooperative and devoted considerable resources to complying with the CRA's requests for information and documentation. During that time, the CRA withheld EGR's net tax refunds for many months at a time, causing considerable cash flow difficulties. Multiple audit theories were raised by the CRA and ultimately abandoned.

(i) *The CRA's First Full-Scale Audit*

41. During a full-scale audit from October 2004 until January 2006, the CRA performed a substantial review of EGR's records and accessed EGR's premises for several weeks. During that audit, the CRA proposed adjustments on the basis that EGR sold "gold cut bars" to its customers, which would be subject to GST/HST, rather than standard gold bars. However, the CRA ultimately abandoned that position and did not issue any reassessments. EGR's net tax refunds had been withheld for 16 months, causing significant cash flow issues.

42. Later in 2006, a second auditor recreated much of the work that the first auditor had performed, and EGR's net tax refunds were again put on hold.

43. In an internal CRA note dated May 2006 (which EGR obtained under an access to information request), a CRA official stated as follows:

[EGR's audit and certain audits of other unrelated parties] have been ongoing for over a year/two years [...]. Our auditees are understandably applying pressure to obtain the requested refunds and are in a position to apply for writs of mandamus.

44. A copy of that note is attached to this Affidavit as **Exhibit "A"**.

45. Later in 2006, a third auditor again recreated much of the work that the first and second auditors had performed. In November 2006, that auditor proposed to issue reassessments to EGR for \$12 million in uncollected GST/HST based on an interpretation of the ETA that differed from EGR's interpretation. The interpretive issue was essentially whether refined gold in grain form (rather than a bar, ingot, etc.) constitutes a "precious metal" under the definition of that term in subsection 123(1) of the ETA (and is thus zero-rated for GST/HST purposes). At that time, EGR would from time to time deliver refined gold to its customers in grain form. A copy of the CRA's reassessment proposal letter is attached to this Affidavit as **Exhibit "B"**.

46. However, under the CRA's interpretation, EGR would also have been entitled to ITCs for GST/HST payable to the third-party refiners. That point was made by EGR to the CRA in a submission dated January 3, 2007, a copy of which is attached as **Exhibit "C"**.<sup>8</sup>

47. In a letter dated June 29, 2007, the CRA agreed that such ITCs would be available, reducing the proposed adjustments from approximately \$12 million to approximately \$3,000 in net tax. A copy of the CRA's letter dated June 29, 2007 is attached as **Exhibit "D"**.

48. Nonetheless, even though the CRA had concluded that EGR was entitled to the net tax refunds it had claimed, the CRA continued to withhold the refunds. EGR requested multiple times for the CRA to pay the refunds, including in a letter dated January 11, 2008, a copy of which is attached as **Exhibit "E"**. The CRA finally issued reassessments in accordance with the letter dated June 29, 2007 on March 28, 2008, and thereafter paid refunds totaling over \$750,000. A copy of the results portion of those notices of reassessment are attached as **Exhibit "F"**.

49. The CRA again inexplicably withheld EGR's net tax refunds for months at a time in 2008 and 2009 but those refunds were eventually paid.

(ii) *The Second Full-Scale Audit*

50. In March 2010, the CRA commenced a second full scale GST/HST audit of EGR and began withholding EGR's net tax refunds.

51. During that audit, the CRA again performed a substantial review of EGR's records. The CRA auditor indicated early in the audit that GST/HST paid by EGR on its purchases of unrefined gold might constitute "business losses", such that ITCs would not be recoverable. Thankfully, the CRA ultimately abandoned that position.

52. On August 6, 2010, EGR sent a letter to the CRA outlining its previous interactions with the CRA and requesting that its net tax refunds be paid. At that point, more than \$350,000 worth of net tax refunds were outstanding dating back to August 2009. Having received no response

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<sup>8</sup> Note that the relevant letter was sent on behalf of EGR by its counsel, Stephen K. D'Arcy, then of Bennett Jones LLP (now Justice at the Tax Court of Canada). Much of EGR's correspondence with the CRA over the years was made by EGR's representatives acting on behalf of EGR. For purposes of this Affidavit, references to interactions between EGR and the CRA should be considered to include such interactions that were conducted by way of EGR's representatives.

from the CRA, follow up letters were sent October 6, November 2, and December 22, 2010. Copies of these letters are attached to this Affidavit as **Exhibit “G”**.

53. In January 2011, the CRA issued reassessments confirming EGR’s entitlement to the net tax refunds, but the CRA only refunded approximately \$250,000 of a total of about \$800,000 in net tax refunds owing.

54. By way of letter dated March 14, 2011, the CRA proposed to reassess EGR on two bases that also depended on alternative interpretations of the ETA and alternative characterizations of EGR’s transactions with its customers and third-party refiners. A copy of that letter is attached as **Exhibit “H”**.

55. Between May 2011 and January 2012, a meeting was held with the CRA, and several detailed submissions were made to the CRA in connection with the CRA’s audit theory. A copy of EGR’s submission dated July 15, 2011 is attached as **Exhibit “I”**.

56. In January 2012, the CRA audit team indicated that the issue would be referred to the Rulings Directorate at CRA Headquarters. A letter referencing that referral is attached as **Exhibit “J”**.

57. Following the referral to CRA Headquarters, there were numerous discussions and correspondence between EGR, the CRA and the Department of Finance regarding the treatment that should be afforded to gold refining activities under the ETA. EGR and its advisors submitted that EGR’s transactions with its customers should be treated as a service under the ETA (such that GST/HST would only apply on the fee charged for the refining). Alternatively, EGR submitted that subsection 153(3) of the ETA could apply to those transaction on the basis that they involve the exchange of property of same class or kind (i.e., gold), which would result in no GST/HST applying whatsoever.

58. EGR and its advisors noted that, if EGR’s transactions with its customers were instead treated as a purchase of unrefined gold and a sale back of refined gold, it would have negative cash flow implications for EGR and would increase tax leakage risk for the CRA.

59. Specifically, on March 29, 2012, EGR's representatives wrote a letter warning the Department of Finance that the CRA's position "will have the obvious but unfortunate consequence of increasing the risk of further tax evasion in an industry where fraudulent practices have already been identified (and prosecuted)." A copy of that letter is attached to this Affidavit as **Exhibit "K"**. Similarly, in a November 9, 2011 submission to the CRA, a copy of which is attached as **Exhibit "L"**, EGR's representatives stated:

Ironically, the CRA's proposal increases the risk of tax leakage and tax fraud. In fact, given the CRA's recent experience with fraud in the gold industry, which primarily involved suppliers who collected but failed to remit GST/HST, it is to the CRA's benefit that subsection 153(3) of the ETA apply to the transactions between EGR and its clients. That is, the CRA's proposal contemplates the collection of GST/HST by large numbers of businesses, which complicates the administrative process for the CRA and increases the risk of tax leakage. As each of the parties would be able to recover the GST/HST payable by way of ITC, there is no financial benefit to the CRA in not applying subsection 153(3) to these transactions.

60. In January 2013, the Rulings Directorate issued the 2013 Ruling, which took the form of a detailed, 12-page memorandum with respect to the treatment of EGR's business operations under the ETA. A copy of the 2013 Ruling is attached as **Exhibit "M"**. Notwithstanding EGR's submissions, the 2013 Ruling held that EGR's transactions with its customers should be treated a purchase of unrefined gold and a sale back of refined gold.

61. EGR has subsequently followed the framework set out in the 2013 Ruling.

62. By way of letter dated February 11, 2013, the CRA proposed to issue reassessments to EGR in accordance with the approach set out in the 2013 Ruling. A copy of that letter is attached as **Exhibit "N"**. Specifically, the CRA proposed to assess EGR approximately \$1.5 million in GST/HST on transactions whereby EGR received unrefined gold from its customers and returned refined gold to them in grain form (i.e., a similar issue to the issue raised in 2006). The CRA assessed on the basis that the sale of refined gold in grain form was subject to GST/HST, which EGR had failed to collect and remit to the CRA. The CRA implemented its proposal by way of reassessments dated November 14, 2013. Those reassessments resulted in "wash transactions", as EGR was able to charge the relevant GST/HST to its customers and they were also presumably able to recover such GST/HST as ITCs.

*(iii) Interactions from 2013 to 2018*

63. Since 2013, EGR has been engaged in constant interactions with the CRA regarding its GST/HST practices, primarily in the form of responding to information requests from CRA with respect to EGR's customers.

64. EGR has hired a full-time staff member to deal with the added burden of CRA's on-going inquiries with respect to GST/HST matters.

65. Since the beginning of 2017, EGR has responded to at least 36 separate inquiries from tax authorities (primarily the CRA), generally involving GST/HST payments made to EGR's customers. Many of the responses included hundreds of pages of documentation. An EGR employee involved in handling those various information requests, prepared a chart summarizing these inquiries and EGR's responses since the beginning of 2017. That chart and copies of the requests themselves are attached as **Exhibit "O"** to this Affidavit.

66. The CRA also conducted a payroll account examination of EGR in late 2017, for which EGR provided the CRA examiner with extensive books and records for review. A copy of the CRA's letter in connection with the audit is attached as **Exhibit "P"**.

67. After the 2013 Ruling was issued, EGR regularly received requests from its customers requesting that EGR pay them GST/HST on past purchases. These requests arose out of CRA reassessments issued to such customers. That, in turn, significantly increased EGR's monthly ITC claims. In a letter dated February 1, 2013, EGR requested confirmation from the CRA that the CRA reassessment proposal documentation EGR was provided by customers met documentary requirements for EGR to claim ITCs. A copy of that letter (without attachments) is attached as **Exhibit "Q"**.

68. Since the 2013 Ruling, EGR's core gold refining operations have not materially changed.

*(iv) 2018 Meetings with Toronto West CRA Officials*

69. On February 22, 2018, EGR received a letter from CRA officials from the Toronto West Tax Services Office requesting to review EGR's books and records for the purpose of verifying the ITCs claimed. The CRA did not take issue with any of EGR's ITC claims as a result of this

review; however, these ITC claims were the subject of the later audit (discussed in detail below) and many of them were subsequently denied as a result of that audit. A copy of the letter is attached as **Exhibit “R”**.

70. In March and April 2018, I met with those CRA officials in connection with that review. During those meetings, one of the officials noted that he had initiated certain earlier audits of EGR, indicated that he was familiar with EGR’s affairs, highlighted general issues with GST/HST fraud in the gold industry, acknowledged that EGR was clearly not involved in any such fraud, and requested EGR’s assistance in combatting such fraud, both by remitting the GST/HST owing to customers directly to the CRA, and by supporting and advocating for legislative amendments with the Department of Finance.

71. Following that meeting, EGR made inquiries with other officials within the CRA about the aforementioned meetings with officials from the Toronto West Tax Services Office. EGR was informed that the CRA officials from the Toronto West Tax Services Office who had met with me had not been acting in their formal capacity as CRA officials, such that there would be no point in continuing interactions and discussions with them. On that basis, EGR took no further steps with respect to the meetings.

**(d) The Most Recent Audit, Judicial Review Application and \$180 Million Assessments**

72. By way of letter dated October 4, 2018, the CRA informed EGR that EGR’s August 2018 GST/HST return was under audit by the Toronto West Tax Services Office (by different officials than those who had been involved in the meetings in March and April 2018). The letter also requested certain information and documentation for purposes of the audit. A copy of that letter is attached to this Affidavit as **Exhibit “S”**.

73. On October 15, 2018, I met with the CRA auditor and her team leader and provided them with all requested information and documentation.

74. On November 6, 2018, a CRA auditor from the Saskatchewan Tax Services Office contacted me and advised me that the CRA was expanding the audit to a full-scale GST/HST audit covering the period from June 1, 2016 to October 31, 2018. That auditor requested EGR’s full software backup for the period and advised that she would be asking for numerous invoices



and other documents. The auditor also stated that the CRA would not be paying any net tax refunds to EGR for its reporting periods from August 2018 forward, including reporting periods not under audit (the “**Decision**”). She indicated that the basis for the Decision was that CRA had identified high risk in the gold industry. However, she stated that she could not identify any specific risk vis-à-vis EGR.

75. On November 7, 2018, EGR sent a letter to the auditor providing a detailed chronology of EGR’s interactions with the CRA over the years and demanding that EGR’s net tax refunds be paid pursuant to the CRA’s obligations under section 229 of the Act. A copy of that letter is attached as **Exhibit “T”**.

76. On November 26, 2018, the auditor responded and confirmed the Decision in writing, indicating that all net tax refunds claimed by EGR for its August 2018 reporting period forward were being withheld by CRA until the full audit was complete. A copy of that letter is attached as **Exhibit “U”**.

77. On the same day, the auditor also wrote to EGR requesting various information as part of the audit. A copy of that letter is attached as **Exhibit “V”**. I subsequently provided her with all requested information.

78. On December 6, 2018, EGR challenged the Decision by way of an application for judicial review in Federal Court. A copy of the notice of application is attached as **Exhibit “W”**. In the application, EGR took the position that the Minister of National Revenue (who acts through her delegates at the CRA) did not have the jurisdiction to withhold EGR’s net tax refunds, because she was required to pay the refunds “with all due dispatch” under section 229 of the Act. EGR sought an order of *mandamus* requiring the net tax refunds to be paid.

79. In January 2019, the auditor and her team leader traveled to Toronto and conducted on-site audit activity at EGR’s premises for a week. During that time, they interviewed me for a full day, toured EGR’s facilities and reviewed EGR’s records. When I asked them whether EGR should continue paying GST/HST to its GST/HST-registered customers, even though the CRA was refusing to pay ITC refunds for that GST/HST, they stated that EGR should. They also

informed me that they also attended Asahi Refining's premises and obtained documentation referable to EGR's transactions with Asahi Refining.

80. In connection with the judicial review application, a CRA official from CRA's Headquarters testified under oath that the CRA's goal was to complete the audit by September 2019, and that the CRA did not have concerns about EGR's compliance with the ETA. He also acknowledged under oath that the CRA's concerns about non-compliance by other industry participants, including EGR's customers, are irrelevant to EGR's entitlement to ITCs.

81. The judicial review application was heard by Justice Pentney on July 3, 2019. During the hearing, Justice Pentney asked the Department of Justice lawyer whether he could cite a legal basis for the CRA not paying net tax refunds for reporting periods that were not under audit. At that time, the CRA was withholding approximately \$10 million in net tax refunds for reporting periods outside of the period under audit. The Department of Justice lawyer acknowledged that he was unable to cite such a legal basis.

82. On July 9, 2019, just four business days after the hearing, the CRA sent a letter to EGR indicating that the audit was being expanded again to include additional reporting periods (for which net tax refunds were being withheld). A copy of that letter is attached as **Exhibit "X"**.

83. On July 22, 2019, the CRA issued GST/HST notices of reassessment to EGR with no warning whatsoever (the "**2019 Reassessments**"). The reassessments related to EGR's June 1, 2016 to July 31, 2018 reporting periods, for which no net tax refunds were outstanding. They increased EGR's net tax for those periods by almost \$10 million (approximately the same amount of outstanding net tax refunds as of the time of the hearing) and imposed gross negligence penalties and interest. A copy of the 2019 Reassessments is attached as **Exhibit "Y"**.

84. The following day, EGR received letter from the CRA, which noted that the reassessed periods "remain under audit and subsequent (re)assessment(s) may be issued for the same periods". In other words, the reassessments were provisional. A copy of that letter is attached to this Affidavit as **Exhibit "Z"**.

85. With respect to the basis for the reassessments, the letter indicated that ITCs were denied in respect of invoices from 10 different customers. The letter also made various inflammatory (and contradictory) allegations, including the following:

The invoices created to support this business activity create the illusion of business activities and transactions that have legal rights and obligations that do not exist, or differ from the actual legal rights and obligations. [...]

Audit has concluded that [the relevant customers] did not, and in fact could not have, supplied the unrefined gold purportedly purchased by EGR. Audit has concluded that these 10 suppliers are missing traders [...]

As these missing traders are said to deal directly with EGR, and yet did not make supplies to EGR, EGR must have direct involvement in the GST/HST scheme, tantamount to intentional deceit. [...]

Audit has concluded that all of these suppliers are missing traders, and as a result did not supply EGR with the unrefined gold indicated on the invoices of accommodation. If it can be shown that there was the transfer of physical goods to EGR, it would be our position that this unrefined gold was a supply of debased gold as part of a carousel scheme, and/or that it did not come from the suppliers named on the invoices.

86. With respect to the CRA's alternative allegation that the transactions related to a "carousel scheme", the CRA explained that a carousel scheme involves a group of persons colluding to create fraudulent GST/HST refunds. The CRA explained that, in the gold refining context, a carousel scheme would involve a customer transacting with a refiner to refine gold, collecting the relevant GST/HST from the refiner, debasing the refined gold with other metals such as zinc, copper or silver in order to change its status for GST/HST purposes, transacting again with the refiner, collecting the relevant GST/HST, etc., until ultimately the customer absconds with the GST/HST without remitting it to the CRA.

87. The CRA's allegations are demonstrably false. The fact that the CRA felt the need to make contradictory, alternative allegations of wrongdoing is telling.

88. With respect to the CRA's first allegation that EGR created false invoices, EGR keeps scrupulous records and can prove beyond any doubt that it transacted with its customers as shown in its invoices (indeed, the CRA seemingly de-emphasized that allegation in subsequent reassessments, as discussed above).

89. EGR can (and will) also disprove the CRA's second allegation that EGR participated in a carousel scheme beyond any doubt. Over the years, EGR has always conducted its business with integrity and in compliance with its legal obligations. EGR has been exceedingly careful in ensuring that its customers are properly identified and GST/HST-registered. The steps that EGR has taken in this regard include the following:

- a) EGR turned away potential customers if they failed to meet EGR's strict onboarding identification requirements;
- b) EGR never transacted with customers if it had any suspicion that they might be engaged in nefarious activities;
- c) EGR stopped transacting with customers on several occasions when the CRA advised EGR that the customer was noncompliant with its GST/HST obligations;
- d) EGR has, for decades, always been fully cooperative with the CRA, other regulators and law enforcement agencies in many different contexts;
- e) EGR confirms that its customers' GST/HST registrations are in good standing with the CRA at the following times: (1) on the initial intake of a customer, (2) on a monthly basis when EGR claims ITCs for GST/HST paid or payable to a customer, and (3) prior to paying GST/HST to a customer; and
- f) EGR generally does not make GST/HST payments to its customers until it has received a corresponding net tax refund from the CRA (relying on the CRA's refund as validation of the customer's legitimacy) and has verified the customer's GST/HST registration number on the three separate occasions described above.

90. On August 20, 2019, EGR filed notices of objection to challenge the 2019 Reassessments. A copy of those notices of objection is attached as **Exhibit "AA"** (without appendices).

91. On September 20, 2019, EGR made a motion in connection with its judicial review application requesting that the hearing be reopened to allow additional evidence relating to the CRA's post-hearing actions. EGR submitted that the 2019 Reassessments appeared to be

intended to establish an artificial debt in order to mitigate against or completely blunt a potential *mandamus* order from the Federal Court, and represented further evidence that the CRA was refusing to pay net tax refunds with all due dispatch in the manner required under the ETA.

92. On March 16, 2020, EGR filed a Notice of Appeal in the Tax Court of Canada pursuant to paragraph 306(b) of the ETA in order to dispute the 2019 Reassessments. A copy of the Notice of Appeal is attached as **Exhibit “BB”**.

93. On May 12, 2020, the Honourable Justice Pentney dismissed EGR’s application for an order of *mandamus* and also dismissed the motion to reopen the hearing. Justice Pentney held that, based on the evidence before him, the application for *mandamus* was premature. He held that the CRA’s duty to pay net tax refunds with due dispatch does not displace the Minister’s authority to verify a claim before paying a refund so long as the audit is conducted with due dispatch. He stated:

[82] On the facts of this case, I am not persuaded that a sufficient time had elapsed for the conduct of the audit before the Applicant launched this application. It should be recalled that the argument centres on the audit of the August 2018 return, which was filed on September 6, 2018. The Applicant was advised on October 4, 2018 that an audit had commenced. On November 7, 2018, the Applicant’s representative wrote to demand that the net tax refund be paid, and it launched this proceeding on December 6, 2018. Unlike the situation in *Nautica Motors*, I do not find that this was a sufficient time to complete the audit.

94. A copy of Justice Pentney’s decision is attached as **Exhibit “CC”**.

95. By way of letter dated May 27, 2020 (the “**May 2020 Proposal Letter**”), the CRA proposed to deny ITCs totaling \$133,451,149.90 in connection with its audit of EGR’s reporting periods from June 1, 2016 to October 31, 2018 (which, apart from the periods from August 1 to October 31, 2018, had already been reassessed pursuant to the 2019 Reassessments). The CRA alleged that the ITCs related to invoices from 66 of EGR’s customers that were “part of a carousel scheme”, and that EGR “is a willing participant in the carousel scheme”. A copy of the May 2020 Proposal Letter is attached as **Exhibit “DD”**.

96. Unlike the proposal letter preceding the 2019 Reassessments, the CRA did not make any allegations that EGR had created false invoices or misrepresented its transactions with its customers.

97. It is notable that the CRA's conclusions in the May 2020 Proposal Letter were expressly only made "on a balance of probabilities". In addition, the only basis for the allegations relates to certain general calculations that the CRA apparently made regarding the gold refining market in the greater Toronto area, and purported differences between EGR's business and that of a typical market participant. The CRA's calculations were as follows:

- a) the weighted purity of unrefined gold purchased by EGR was 83%, while the "expected range" in the market would be 50% to 65%; and
- b) 90% of EGR's volume of unrefined gold purchases were from only 20% of EGR's customers, and those customers were, on average, doing almost double the weekly volume used as a "benchmark" by the CRA (while refusing, despite being asked, to provide any detail whatsoever of what either their "expected range" or "benchmark" is actually based upon).

98. In the May 2020 Proposal Letter, the CRA also alleged that EGR had failed to exercise sufficient diligence with respect to its customers, suggesting that EGR should have vetted customers based on factors like credit score (even though the CRA did not dispute that EGR was compliant with its customer identification obligations under the ETA and FINTRAC).

99. Following the issuance of the May 2020 Proposal Letter, EGR repeatedly requested that the CRA disclose the assumptions and data forming the basis for the CRA's calculations so that EGR could explain why EGR's business might be different from a typical market participant, or explain why the benchmarks used by the CRA are inapplicable to the market that EGR actually participates in. The CRA repeatedly refused under the guise of confidentiality.

100. On July 10, 2020, EGR wrote to the CRA and stated that the "lack of disclosure puts EGR in an impossible situation and deprives it of the most basic fairness and due process, especially given the nature and seriousness of the allegations contained in the [May 2020 Proposal Letter] and their potential fatal impact on EGR". EGR also noted that the CRA's assumptions and data would be general market information that would not contain identifying information, such that they would not be confidential. EGR also noted that, under paragraph 295(5)(b) of the ETA, the CRA would be permitted to provide EGR with confidential

information that can be reasonably regarded as necessary for the purposes of determining EGR's liability under the ETA. A copy of that letter is attached as **Exhibit “EE”**.

101. However, in a letter dated July 28, 2020, the CRA continued to refuse to release the information and insisted on issuing the proposed reassessments. The CRA even weaponized EGR's good faith attempts to lobby the CRA and the Department of Finance to address the risk of tax leakage in connection with the GST/HST treatment of gold refining. The CRA stated that “[t]he explicit warning by Salama to the CRA and Department of Finance only solidify our position that Salama knew the vulnerabilities of the GST/HST system, and took advantage of those vulnerabilities”.<sup>9</sup> That EGR's pursuing in good faith the democratic processes which are part of our community, to effect positive change in suggesting legislative and policy steps, would be used by the CRA as evidence against us has disturbed me greatly.

102. On July 29, 2020, the CRA issued notices of reassessment for EGR's reporting periods from June 1, 2016 to October 31, 2018 (the “**2020 Reassessments**”). A copy of the 2020 Reassessments is attached as **Exhibit “FF”**. The 2020 Reassessments maintained the adjustments made by way of the 2019 Reassessments, denied additional ITCs, and also imposed gross negligence penalties. In total, the 2020 Reassessments imposed tax, penalties and interest totaling \$189,531,562.93.

103. Details regarding the current status of EGR's ITC refund claims and the amounts owing to and from EGR with respect to its reporting periods from June 1, 2016 to August 31, 2020, following the issuance of the 2019 Reassessments and the 2020 Reassessments, are contained in **Schedule 1** to this Affidavit.

104. By way of letter dated August 12, 2020, the CRA advised EGR that it was commencing a new GST/HST audit for EGR's reporting periods from November 1, 2018 to June 30, 2020.

105. On September 11, 2020, EGR amended its existing Tax Court appeal by filing a Fresh As Amended Notice of Appeal in connection with the 2020 Reassessments for the reporting periods that were also the subject of the 2019 Reassessments (*i.e.*, the June 1, 2016 to July 31, 2018 reporting periods). A copy of the Fresh As Amended Notice of Appeal is attached as **Exhibit**

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<sup>9</sup> Page 4.

“GG”. EGR will file notices of objection in due course to dispute the 2020 Reassessments for the remaining reporting periods (*i.e.*, the August 1 to October 31, 2018 reporting periods).

106. By way of letter dated September 17, 2020, the CRA denied EGR’s request for disclosure of the CRA’s audit file, citing the Tax Court appeal and involvement of Department of Justice. A copy of that letter is attached as **Exhibit “HH”**.

*Comments on the Basis For the 2020 Reassessments*

107. My family has operated honourably in the precious metals business for four generations, and EGR has built a reputation for trustworthiness since 1994. More than most businesses, EGR’s business depends on maintaining that reputation of trust. EGR’s customers regularly entrust EGR with possession of valuable precious metals and substantial amounts of money. I would never jeopardize my reputation, my family’s reputation and EGR’s reputation by participating in fraud.

108. The CRA’s allegations are based on “audit assumptions” unsupported by the disclosure of any evidence as discussed above. Furthermore, the CRA has never explained the benefit to a trusted and established market participant, EGR, of participating in the purported scheme. It simply does not stand to reason that EGR would pay 13% in GST/HST under fraudulent circumstances, placing it in a position of depending on the CRA to pay ITC refunds (which historically have been difficult to obtain), risking its business and risking criminal charges – all to earn a fee of 1 to 2%.

109. In particular, it does not stand to reason when it is considered that EGR has been under virtually constant audit scrutiny from the CRA since 2004.

110. What seems more reasonable is that the CRA is concerned about flaws in the GST/HST treatment of the gold refining industry that lead to tax leakage and, rather than seeking to address those flaws through changes in legislation or policy, it is seeking to wipe out that industry. If that is the case, it is particularly ironic that the CRA is seeking to destroy EGR, which had advocated to the CRA and the Department of Finance, in good faith, for legislative and policy fixes to those very flaws.



111. Moreover, as was noted in passing in Tax Counsel's letter to CRA dated July 10, 2020 (**Exhibit "EE"**), CRA acknowledges that their current position places a novel theory of responsibility on EGR, and one which in any practical sense is unable to be addressed in the real commercial world by market participants, including EGR.

112. Finally, the fact that EGR is requesting the transparency and oversight of these proceedings shows that the CRA's allegations are wrong. If EGR participated in wrongdoing, it would never expose itself to the scrutiny of the CCAA process and would never invite the proposed monitor to implement and oversee controls over its business.

### **FINANCIAL POSITION OF EGR**

#### **(a) Cash position**

113. EGR is generally able to meet its ordinary course obligations as they become due apart from the liabilities associated with the 2019 Reassessments and the 2020 Reassessments.

114. As noted above, EGR's refining business generated approximately 80% of its revenue from the refining business. However, EGR's refining business has declined by approximately 95% as a result of the COVID-19 pandemic. I anticipate that the refining business will increase as businesses re-open.

115. As noted above, EGR also holds trading and hedging positions for certain customers in cash, precious metals and/or forward contracts. I will discuss this in greater detail under the heading "Customer Arrangements" commencing at paragraph 140, below. The following charts outline EGR and their customer positions as at September 30, 2020:

As at September 30, 2020	Held at		Total
	EGR	CIBC	
<b>Total Cash Position</b>			
CAD	864,528	2,518,754	<b>3,383,282</b>
USD	594,115	591,485	<b>1,185,600</b>
<b>Less Customer Amounts</b>			
CAD	-	451,250	<b>451,250</b>
USD	-	-	-
<b>EGR's Cash Position</b>			
CAD	864,528	2,067,503	<b>2,932,032</b>
USD in CAD equivalent	791,540	788,036	<b>1,579,575</b>
	<u>1,656,068</u>	<u>2,855,539</u>	<b>4,511,607</b>

As at September 30, 2020	Held at
	EGR
<b>Total Inventory Position in Base Unit</b>	
Gold	1,183.05
Silver	45,344.33
Platinum	112.98
Palladium	16.51
<b>Less Customer Amounts</b>	
Gold	689.54
Silver	11,793.93
Platinum	32.15
Palladium	-
<b>EGR's Inventory Position</b>	
Gold	493.51
Silver	33,550.39
Platinum	80.83
Palladium	16.51

<b>As at September 30, 2020</b>	
<b>Total Account Value</b>	
Held at	CAD equivalent
Asahi	3,776,215
Asahi Refining	393,429
RCM	55,001
Saxo	688,992
FXDD	370,817
RJO	174,074
Total	<b>5,458,528</b>
Customer Account Position in CAD	<b>(4,912,686)</b>
	545,842
<b>Forward Contracts Positions (Unrealized)</b>	
With Customers	<b>(30,414)</b>
With Third Parties	<b>6,025</b>
	<b>(24,388)</b>

**(b) Bullion Buyers**

116. EGR transacted business with 363 bullion buyer customers who purchased gold from EGR from May to July 2020 with sales totaling \$29.9 million, excluding GST/HST (\$30.0 million including GST/HST). EGR transacted with 25 bullion buyers with average monthly sales greater than \$100,000 (ranging from average monthly sales of \$772,302 to \$104,100). Such bullion buyers can be identified upon request (keeping in mind that identifying them in a public document could expose them to the risk of robbery).

**(c) Gold vendors**

117. During May to August, 2020, to supply bullion buyers, EGR purchased from bullion vendors and also supplied bullion derived from the refining of unrefined gold purchases. There were 468 gold vendors from May to August 2020 with EGR's purchases totaling \$40.5 million excluding GST/HST (\$40.7 million including GST/HST).

118. EGR transacted with 26 gold vendors with average monthly purchases greater than \$30,000 (ranging from average monthly purchases of \$3,573,026 to \$30,409). Such vendors can be identified upon request (keeping in mind that identifying them in a public document could expose them to the risk of robbery and theft).

119. Up to this point, we have been forced to advise our gold vendors that GST/HST payments on purchases cannot be made until a resolution is reached with the CRA regarding the CRA's payment of ITC refunds to EGR. This has caused EGR to lose certain vendors who will now only transact with competitors. However, EGR has been continuing business with certain long-term gold vendors under this new arrangement.

120. The chart below outlines a summary of EGR's aggregate creditors as of August 31, 2020:

<b>Type of Creditor</b>	<b>Number of Creditors</b>	<b>Total Amount Owning</b>
Customers with GST/HST owing	94	32,620,607
Customer Accounts	57	1,991,142
Other Suppliers	13	516,718

121. The foregoing is provided for illustration and does not change materially on a monthly basis

**(d) Financial Statements**

122. EGR's last compiled financial statements was for the year ended May 31, 2019:

**Express Gold Refining Ltd.**  
**Balance Sheet**  
 As at May 31, 2019  
 (Unaudited)

	<b>2019</b>	2018
	<b>\$</b>	<b>\$</b>
<b>Assets</b>		
Current Assets		
Cash	<b>5,355,214</b>	12,251,750
Marketable securities	<b>254,865</b>	255,834
Accounts Receivable	<b>35,515,994</b>	11,684,967
Due from related parties	<b>2,746,744</b>	1,340,025

**Express Gold Refining Ltd.****Balance Sheet**

As at May 31, 2019

(Unaudited)

Income taxes recoverable	-	16,995
Inventories	<b>3,368,157</b>	4,074,538
Prepaid Expenses	<b>13,500</b>	16,604
	<b>47,254,474</b>	29,640,263
Property and Equipment	<b>280,091</b>	305,662
	<b>47,534,565</b>	29,945,925
<b>Liabilities</b>		
Current Liabilities		
Accounts Payable and accrued liabilities	<b>41,886,810</b>	26,796,322
Income taxes payable	<b>738,374</b>	-
Due to related parties	<b>911,965</b>	915,449
	<b>43,537,149</b>	27,711,771
<b>Shareholders' equity</b>		
Share capital	<b>98</b>	105
Retained earnings	<b>3,997,318</b>	2,234,049
	<b>3,997,416</b>	2,234,154
	<b>47,534,565</b>	29,945,925

123. As at May 31, 2019, EGR had approximately \$5.4 million in net available cash on hand.

124. As at May 31, 2019, EGR's assets had a book value of approximately \$47.5 million and liabilities of approximately \$43.5 million. The majority of EGR's assets on its balance sheet relate to accounts receivable of \$35.5 million, while the majority of EGR's liabilities on its balance sheet relate to accounts payable and accrued liabilities of \$41.9 million.

125. EGR does not have any secured creditors except in relation to the customer funds, bullion and contracts referenced below in my affidavit.

**(e) Cash Flow Forecast**

126. With the assistance of the proposed monitor, EGR has prepared a 13-week cash flow forecast (the "**Cash Flow Forecast**") for the week commencing October 5, 2020 to the week ending January 1, 2021. A summary of the cash flow appears below.

<b>Receipts</b>	
Sales	28,382,312
HST refunds	-
Interest income	6,000
<b>Total Receipts</b>	<b>28,388,312</b>
<b>Disbursements</b>	
Purchases	26,726,044
HST	770,356
Salaries and wages	151,212
Consulting and professional fees	150,000
General Administrative Expenses	96,402
Insurance	112,500
Rent	43,440
Advertising and promotion	54,676
Vehicle	5,799
Freight	20,000
Income Tax	30,000
<b>Total Disbursements</b>	<b>28,160,429</b>
<b>Net Cash Flow Before Litigation and Restructuring Costs</b>	<b>227,883</b>
Litigation Costs	450,000
Restructuring Costs	550,000
<b>Total Litigation and Restructuring Costs</b>	<b>1,000,000</b>
<b>Net Cash Flow</b>	<b>(772,117)</b>
<b>Opening Cash</b>	<b>2,566,637</b>
<b>Ending Cash</b>	<b>1,794,520</b>

127. EGR's opening cash balance on October 12, 2020 was approximately \$2.6 million. The full 13-week cash flow is attached hereto as **Exhibit "II"**.

128. The forecast cash flow surplus for the 12-week period ("**Cash Flow Period**") before litigation and restructuring costs is estimated to be \$227,883. Sales are estimated to be \$28.4 million over the Cash Flow Period with corresponding purchases of bullion and scrap metals of approximately \$26.7 million. GST/HST payments on goods and services are estimated to total \$770,356. Other significant cash outflows during the Cash Flow Period are as follows:

- a) Salaries and wages: \$151,212

- b) Consulting and professional fees: \$150,000
- c) Insurance: \$112,500
- d) General and administrative expenses: \$96,402

129. Because of the 2019 Reassessments and the 2020 Reassessments, EGR will incur litigation and restructuring costs to defend and resolve the matter, even before considering any amount that may be needed to effect an early resolution. Litigation and restructuring costs are estimated to be \$450,000 and \$550,000 respectively over the Cash Flow Period. The forecast cash flow deficit for the Cash Flow Period after litigation and restructuring costs is estimated to be \$772,117.

130. Based on the cash flow forecast presented, EGR does not have the financial resources to pay the amounts assessed by way of the 2019 Reassessments and the 2020 Reassessments. Furthermore, EGR's liquidity position will continue to erode and additional financing will need to be considered should the restructuring and the litigation relating to the 2019 Reassessments and the 2020 Reassessments extend well past the 12-week cash flow forecast period, which I anticipate.

**(f) Cash Management**

131. EGR operates a CAD and USD bank account at CIBC. EGR also holds physical cash on hand at its head office. The physical cash on hand and bank accounts at CIBC are used to facilitate day-to-day operational needs. The chart in paragraph 115 above provides details on the September 30, 2020 cash balance held at EGR and at CIBC in CAD and USD.

132. EGR currently has one credit card. The credit cards facilitate payment of various expenses related to office, advertising, telephone and general and administrative expenses.

**(g) Related Party Arrangements**

133. The following table outlines related party balances as at September 30, 2020:

Related Party	Receivable / (Payable) as at September 30, 2020
---------------	---

Farag Properties Inc.	2,243,350
1420781 Ontario Ltd.	920,843
Express Forex Inc.	311,273
Mary/Nabil	32,000
Atef	16,710
Watchdeals.ca	1,362
Prestige Precious Metals Ltd.	(1,416,897)
Shareholders	(80)
Fr. Pishoy Family Trust	(15)

134. Details relating to those parties and balances are as follows:

- a) Farag Properties Inc. – EGR leases its head office from Farag Properties Inc. at a monthly rent of \$14,480, including GST/HST. EGR manages Farag Properties Inc.’s property and receives an annual management fee of \$60,000 including GST/HST.
- b) 1420781 Ontario Ltd. – EGR's parent company.
- c) Express Forex Inc. – A related company facilitating foreign exchange transactions for EGR and other clients. It holds funds at Luminus Financial and remits certain amounts to EGR on a monthly basis. The receivables balance owing to EGR is typically around \$200,000.
- d) Atef / Nabil / Mary / Fr. Pishoy Family Trust – Shareholders of EGR. The balances represent shareholder advances. There has been a further advance to me of approximately \$300,000 to complete the purchase of residential real estate. I will provide full particulars of this to the monitor.
- e) Watchdeal.ca – A related company with a small receivable balance that is uncollectible and will be written off.
- f) Prestige Precious Metals Ltd. – EGR pays \$150,000 annually in management fees.



**NORMALIZING OPERATIONS POSTFILING****(a) Net Tax Refunds**

135. In order to stabilize its business, EGR requires that the CRA pay net tax refunds for the ITCs generated when EGR pays GST/HST to its customers and other business suppliers. As discussed above, the GST/HST payments in connection with EGR's business are several times greater than the revenue that EGR generated through that business. Accordingly, by way of this application, EGR is seeking a mechanism overseen by the Court whereby EGR will pay GST/HST to customers that have been approved the Court and other business suppliers, and the CRA will regularly pay the corresponding net tax refunds to EGR.

136. In order to address the concerns raised by CRA relating to certain customers and former customers, EGR will work closely with the prospective monitor to achieve any reasonable commercial transparency that the CRA may suggest.

137. . But for the 2019 Reassessments, the 2020 Reassessments and the CRA's ongoing refusal to pay ITC refunds to EGR, EGR would have no need for these proceedings and would be entirely capable of meeting its obligations as they come due. Accordingly, EGR is asking the Court's permission to carry on its business in the ordinary course without regard to the distinctions usually drawn between pre-filing and post-filing creditors. EGR is also asking that the net tax refunds owing by the CRA to EGR following this application not be offset against the pre-filing amounts owing to the CRA in connection with the 2019 Reassessments or the 2020 Reassessments (as they already have been by the CRA to date).

138. It is my understanding that the prospective monitor is supportive of this approach in these circumstances.

**(b) Customer/Supplier Arrangements**

139. EGR is also seeking the Court's permission to continue to honour and pay all pre-filing obligations owing to customers and suppliers who have dealt with EGR in good faith.

140. In particular, as discussed above, EGR holds cash, gold and forward contracts for customers in connection with its refining business (the "**Refining Customer Assets**"). The

Refining Customer Assets are typically only held for the duration of the relevant refining transaction (i.e., between the time that the unrefined gold is delivered to EGR and the time that EGR delivers refined gold or equivalent funds to the customer).

141. As discussed above, EGR also holds cash, gold bullion and forward contracts on a longer-term basis for customers with which EGR has a long-standing, trusting relationship (the “**Trading Customer Assets**”).

142. EGR and its customers have always understood that EGR holds the Refining Customer Assets and the Trading Customer Assets on behalf of each relevant customer in a manner akin to a legal trust.

143. I have been advised by counsel that these arrangements should be formally documented in a manner to create legal trusts and accordingly, I am now asking for the Court’s permission to do so in a manner which will instil confidence in my customers to continue to transact business with EGR and provide oversight and transparency to the Monitor over all aspects of these arrangements.

144. I believe that these measures will assist EGR to preserve the status quo while the dispute with the CRA is dealt with in the Tax Court of Canada.

145. The proposed measures would not relate to the Refining Customer Assets, since such assets are of a short-term nature and constitute ordinary course obligations. The proposed measures would only relate only to Trading Customer Assets. In particular, the proposal is as follows:

- a) EGR would establish a separate bank account that would hold only funds in trust for customers, such that the trust funds would be segregated from the funds held by EGR on its own account;
- b) EGR would delineate a separate storage area that would hold only gold bullion in trust for customers, such that the bullion would be segregated from the bullion held by EGR on its own account;

- c) EGR would establish a separate account with Asahi Refining or Saxo bank that would hold only funds and forward contracts in trust for customers, such that the relevant funds and forward contracts would be segregated from the funds and forward contracts held by EGR on its own account; and
- d) EGR would provide each of the customers in respect of which EGR holds Trading Customer Assets with a monthly Trust Account Statement specifying the assets held in trust by EGR as of that month, and expressly stating that “the assets set out herein are held in trust by EGR on behalf of the beneficiary listed above”.

### **EGR IS AT IMMEDIATE RISK**

146. On Thursday morning, October 8, 2021 I received a call from a collection officer with CRA seeking to, among other things, inform me that collection proceedings would be commencing against EGR in 7 days if arrangements were not put in place to deal with the approximately \$180 million balance on account with CRA and that I was being put on warning of this eventuality. While I briefly discussed what this entailed for the business, it was made clear to me that EGR was being asked to post security in the form of tangible assets such as real property, letters of credit, cash and the like for the full balance outstanding with CRA of approximately \$180 million. As I was unsure of how to respond to this call which came to me without warning, I instructed my collection advisor Michael Collinge of Deloitte LLP to contact the officer to determine what this meant.

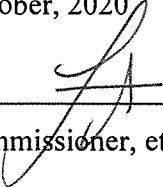
147. I understand from Michael Collinge’s discussion with the collections officer that no collection actions would be taken before the 15<sup>th</sup>. Attached is a letter as **Exhibit “JJ”** from Michael Collinge to the CRA confirming such an understanding with CRA.

148. EGR does not have the capacity to provide the requested security as demanded by CRA. If unstayed, such collection activities would immediately drive EGR out of business.


149. As such, EGR is seeking the protection of these proceedings while is pursues its appeal to the Tax Court and further seeks to normalize interactions with CRA to ensure a stable cash flow

to the business and preserve the status quo in accordance with the principles of restructuring as I understand them under the CCAA.

Sworn before me via )  
videoconferencing this 14<sup>th</sup> day )  
of October, 2020 )

  
\_\_\_\_\_  
A Commissioner, etc.

JANINE ABULUYAN  
LSO No. 80807R

  
\_\_\_\_\_  
ATEF SALAMA

This is **Exhibit "F"** to the affidavit of Atef Salama sworn before me via Zoom this 3<sup>rd</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

JOËL TURGEON



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\* Associated Firm  
\*\* In cooperation with  
Trench, Rossi e Watanabe  
Advogados

April 23, 2021

Marilyn Vardy  
National Litigation Sector  
Department of Justice Canada  
Ontario Regional Office  
120 Adelaide Street West - Suite 400  
Toronto, Ontario M5H 1T1

By email: marilyn.vardy@justice.gc.ca

Dear Ms. Vardy:

**RE: Express Gold Refining Ltd. v. HMQ  
Court File No. 2020-1214(GST)G**

Further to our recent discussions and the April 15, 2021 Case Management Conference, we write with respect to the Respondent’s Affidavit of Documents, dated March 31, 2021 and corresponding document production.

Based on our preliminary review of the documentation provided, the Respondent’s productions can be broken down as follows:

Number of Documents	Description
13,361	<b>Books &amp; Records:</b> Express Gold Refining Ltd.’s (“EGR”) original accounting records provided to CRA during audit. EGR also included these documents in its Affidavit of Documents and productions
103	<b>Bank Records:</b> Standard banking statements/records for EGR
583	<b>Delivery Records:</b> Standard delivery records/invoices from Armoured Security (Canada) Inc.
176	<b>Requests for Information:</b> CRA requests to various third parties and select responses, including (approximate number of documents in parentheses): <ul style="list-style-type: none"> <li>• Standard banking records (50)</li> <li>• Documents regarding 727017 Ontario Ltd. (30)</li> <li>• Internal CRA memos from CRA auditor to team leader requesting to make third party requests for information (23)</li> <li>• Other (73)</li> </ul>



147	<b>Third Party Audit Reports:</b> Third Party Final Audit Reports and Position Papers
100	<b>EGR Audit Documents:</b> Select CRA working papers and other select audit documents pertaining to the audit of EGR
53	<b>Misc.:</b> Miscellaneous records (corporate profile searches, books and records, etc. that have been retrieved or drafted in the course of the audit)
<b>14,523</b>	<b>Total Documents Disclosed</b>

CRA and the Department of Finance have undertaken extensive investigation and analysis over the years in respect of the scrap gold industry, including by way of numerous interactions with EGR. The scope of documents identified and provided by the Respondent is implausibly narrow and falls short of the Respondent's obligations pursuant to Rule 82. The Respondent has failed to identify and produce substantial categories of documents in its possession that are clearly relevant to these proceedings. The Respondent has also failed to identify and produce a number of documents missing from the general categories listed above. EGR requests that the Respondent rectify its deficient productions.

Attached as Schedule "A" to this letter is a list of additional categories of documents and individual documents that should form part of the Respondent's productions. EGR requires prompt disclosure of the documentation listed in Schedule "A".

We look forward to disclosure of these additional productions and ask that you provide an estimated timeline for disclosure in advance of the Case Management Conference scheduled for May 6, 2021. In the interest of time, we would be pleased to work with counsel to determine an order of priority for disclosure.

EGR reserves its rights to request further information and documentation, to challenge any redactions in existing productions and to challenge privilege claims with respect to documents listed in Schedule "B" of the Respondent's Affidavit of Documents.

\* \* \* \* \*



We will be in touch shortly regarding a proposed timetable for the remaining steps in this appeal.

**BAKER & McKENZIE LLP**

A handwritten signature in blue ink, appearing to read "B. Horrigan".

**Bryan Horrigan**

Associate

(416) 865-3905

[bryan.horrigan@bakermckenzie.com](mailto:bryan.horrigan@bakermckenzie.com)

- c. J. Bernier, Baker & McKenzie LLP (by email)
- c. J. Mann, Department of Justice (by email)
- c. D. Aird, Department of Justice (by email)
- c. M. Ding, Department of Justice (by email)





**Schedule “A” to  
April 23, 2021 Letter:  
List of productions required from the Respondent**

<b>I.</b>	<b><u>Standard Audit Documents in CRA audit team’s possession</u></b>	<b><u>Crown Reply Reference</u></b>
<b>1</b>	<b>Issue sheets:</b> All issue sheets with respect to the “ <b>2019 Reassessments</b> ” and “ <b>2020 Reassessments</b> ” (as defined in paras. 19 and 20 of the Crown Reply; hereinafter, collectively, the “ <b>Reassessments</b> ”) and corresponding audit of EGR (the “ <b>Audit</b> ”), drafts thereof and emails enclosing issue sheets and drafts thereof, including, but not limited to, issue sheets delivered to CRA Headquarters officials	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 22 (assumptions)
<b>2</b>	<b>Briefing Notes:</b> All briefing notes with respect to the Audit or Reassessments of EGR, drafts thereof and emails enclosing briefing notes and drafts thereof, including, but not limited to briefing notes delivered to: CRA Headquarters officials, the CRA Commissioner, and the Minister of National Revenue	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 22 (assumptions)
<b>3</b>	<b>T2020</b> – All T2020s (Memo for File) by Auditor(s) for the Audit	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 22 (assumptions)
<b>4</b>	<b>Working Papers:</b> All Audit working papers with respect to the Audit	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 22 (assumptions)
<b>5</b>	<b>Third Party Communications:</b> All notes, whether hand-written or transcribed, regarding discussions with third parties interviewed by CRA concerning EGR or the alleged carousel scheme(s)	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 22 (assumptions)
<b>6</b>	<b>Third Party Information:</b> All documents received from third parties with respect to the Audit, including but not limited to documents received from The Royal Canadian Mint, Asahi Refining Canada Ltd., Imperial Smelting (Umicore), Glencore and Oliver Jewellery	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 22 (assumptions)
<b>7</b>	<b>10 Missing Vendor Allegations:</b> All documents with respect of CRA’s allegations that EGR did not purchase gold from the “ <b>Missing Vendors</b> ” (as defined in subpara. 22.27 of the Crown Reply)	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 19; subparas. 22.27 to 22.32 (“missing vendor” allegations)



8	<b>Research Centre:</b> Copies of all documents with respect to all requests and referrals made to the CRA's Research Centre during the course of the Audit and all responses from the Research Centre and work product from the Research Centre	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal) Para. 22 (assumptions)
9	<b>Audit Plans:</b> All Audit Plans (and drafts thereof) in respect of the Audit (no Audit Plan has been disclosed for 2020 Reassessments) and emails between CRA officials enclosing drafts	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal) Para. 22 (assumptions)
10	<b>Penalty Recommendation Reports:</b> All Penalty Recommendation Reports (and drafts thereof) in respect of the Audit (no such report has been disclosed for 2019 Reassessments) and emails between CRA officials enclosing drafts	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal) Para. 23 (facts re: gross negligence penalties)
11	<b>T134</b> – Referral to Criminal Investigations referenced in Auditor's Report	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal) Para. 22 (assumptions)
12	<b>Response to Referral to Criminal Investigations</b> – All responses and correspondence from Criminal Investigations in respect of the referral of EGR to Criminal Investigations (T134)	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal) Para. 22 (assumptions)
13	<b>Audit Report Drafts:</b> All drafts of Audit Reports (whether saved separately on a document filing system, enclosed as attachments to emails or exist elsewhere) and emails between CRA officials enclosing such drafts	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal) Para. 22 (assumptions)
14	<b>Position Paper Drafts:</b> All drafts of Position Papers (whether saved separately on a document filing system, enclosed as attachments to emails or exist elsewhere) and emails between CRA officials enclosing such drafts	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal) Para. 22 (assumptions)
15	<b>Scrap Gold Industry Fact Sheet Drafts:</b> All drafts of the Scrap Gold Industry Fact Sheet (R001013) (whether saved separately on a document filing system, enclosed as attachments to emails or exist elsewhere) and emails between CRA officials enclosing such drafts	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal) Para. 22 (assumptions)
16	<b>Basic communications:</b> All emails and records of other communications involving Jaclyn Bartlett, Cathy Gadzella, Gisele Wonta, Jolene Baines, Lyndon Osman and any other official at the Saskatchewan TSO regarding the Audit	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal) Para. 22 (assumptions)



II.	<u>Documents in possession of other officials</u>	<u>Crown Reply Reference</u>
17	<p><b>AGP BI Documents:</b> All documents with respect to AGP Business Intelligence's "several year" long risk assessment of the scrap gold industry (referenced at page 25 of R001100).</p>	<p>Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)</p> <p>Para. 4; subparagraphs. 22.33 to 22.40 (alleged wilful blindness)</p>
18	<p><b>Documents from various CRA offices:</b> All documents, emails and records of other communications, in the possession of the CRA regarding EGR including, but not limited to, documents and emails with respect to:</p> <ul style="list-style-type: none"> <li>- the scrap gold industry</li> <li>- scrap gold volumes and purities</li> <li>- GST/HST leakage</li> </ul> <p>including, but not limited to documents in the possession of or authored by:</p> <ul style="list-style-type: none"> <li>- CRA Headquarters officials (including, but not limited to, Jennifer Ryan, Vance Smith, Paul Stesco, Sylvain Lessard, Mario Duguay)</li> <li>- Toronto West TSO officials (including but not limited to Salome Callaghan, Frank Prizzon, James Gilbert, Brian Sanders, Lesley Baynes)</li> <li>- Toronto Centre TSO officials (including but not limited to Henry Pao, Amelia Liu)</li> <li>- Saskatchewan TSO officials (including but not limited to Jaclyn Bartlett, Cathy Gadzella, Gisele Wonta, Jolene Baines, Lyndon Osmon)</li> </ul>	<p>Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)</p> <p>Para. 22 (assumptions)</p>
19	<p><b>Net Tax Refund Reviews:</b> All documents related to approval (or denial) of EGR's net tax refund claims for each reporting period from June 2015 to October 2018, including but not limited to, documents from the CRA Refund Integrity Unit</p>	<p>Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)</p> <p>Para. 4; subparagraphs. 22.33 to 22.40 (alleged wilful blindness)</p>
20	<p><b>EGR Volumes and Purities:</b> All documents that reference EGR's scrap gold volumes and purities including, but not limited to, documents authored by CRA Business Intelligence Officers (including both those that pre-date the Audit and those from the commencement of the Audit forward)</p>	<p>Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)</p> <p>Para. 4; subparagraphs. 22.33 to 22.40 (alleged wilful blindness)</p>
21	<p><b>EGR Risk Assessments:</b> All risk assessment reports and other documents with respect to risk assessments for EGR, applicable from fiscal year end May 31, 2013 to May 31, 2019</p>	<p>Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)</p> <p>Para. 22 (assumptions)</p> <p>Para. 4; subparagraphs. 22.33 to 22.40 (alleged wilful blindness)</p>

22	<p><b>EGR Collection diaries:</b> All collection diaries (e.g., Automated Collections and Source Deductions Enforcement System (ACSES) diaries) with respect to EGR</p>	<p>Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)</p> <p>Para. 4; subparas. 22.33 to 22.40 (alleged wilful blindness)</p>
23	<p><b>EGR Integras reports:</b> The summary report from Integras systems with respect to EGR</p>	<p>Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)</p> <p>Para. 22 (assumptions)</p> <p>Para. 4; subparas. 22.33 to 22.40 (alleged wilful blindness)</p>
24	<p><b>Documents re: Third Parties:</b> All documents with respect to the “<b>Scheme Participants</b>” (as defined in subpara. 22.24 of the Crown Reply) and any person alleged to be involved in the alleged “<b>Carousel Scheme</b>” (as defined in subpara. 22.14 of the Crown Reply) (collectively, the “<b>Relevant Third Parties</b>”), including but not limited to:</p> <ul style="list-style-type: none"> <li>- All collection diaries (e.g., Automated Collections and Source Deductions Enforcement System (ACSES) diaries) (from 2013 to date)</li> <li>- All documents (from 2013 to date) with respect to compliance actions taken by the CRA with respect to the remittance of net tax by the Relevant Third Parties including, but not limited to, the CRA’s recovery or attempted recovery of debts of the Relevant Third Parties and the CRA’s actions taken to require GST/HST return filings and remittances in respect of same</li> <li>- All documents (from 2013 to date) with respect to allegations that GST/HST paid by EGR was not remitted to the CRA by the Relevant Third Parties</li> <li>- GST/HST returns of the Relevant Third Parties for each reporting period from June 2016 to December 31, 2019</li> <li>- All documents from the Système Universel Delpac System (SUDS) with respect to the Relevant Third Parties from June 1, 2015 to date</li> <li>- All documents related to GST/HST registration applications, verifications, registrations and de-registrations (where applicable) of the Relevant Third Parties</li> <li>- All documents with respect to CRA collections and enforcement actions taken by the CRA with respect to the Relevant Third Parties</li> <li>- All risk assessment reports and other documents with respect to risk assessments in respect of the Relevant Third Parties</li> <li>- All summary reports from the Integras system with respect to each of the Relevant Third Parties</li> </ul>	<p>Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)</p> <p>Paras. 22.41 and 22.42 (alleged GST/HST leakage)</p> <p>Para. 4; subparas. 22.33 to 22.40 (alleged wilful blindness)</p>

This is **Exhibit "G"** to the affidavit of Atef Salama sworn before me via Zoom this 3<sup>rd</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

JOEL TORGEON



**Department of Justice  
Canada**

**Ministère de la Justice  
Canada**

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Our File Number: LEX-500025225

**BY EMAIL**

May 5, 2021

Baker & McKenzie LLP  
Brookfield Place  
181 Bay Street  
Suite 2100  
Toronto, Ontario  
M5J 2T3

**Attention: Jacques Bernier and Bryan Horrigan**

Dear Counsel:

**Re: EXPRESS GOLD REFINING LTD. v. H.M.Q.  
Court File No.: 2020-1214(GST)G**

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Please find attached the Respondent's response/position regarding the matters raised in Mr. Horrigan's letter dated April 23, 2021 (concerning documentary productions of the Respondent).

Sincerely,

Marilyn Vardy  
General Counsel  
Tax Law Services Division

cc: Diana Aird, Jasmeen Mann, Michael Ding, Department of Justice – Counsel for the Respondent (*by email*)

## “Schedule A”

	<b>EGR Request</b>	<b>EGR’s “Crown Reply Reference”</b>	<b>Crown Response/Position</b>
<b>I.</b>	<b>Standard Audit Documents in CRA audit team’s possession</b>		
<b>1</b>	<b>Issue sheets:</b> All issue sheets with respect to the “ <b>2019 Reassessments</b> ” and “ <b>2020 Reassessments</b> ” (as defined in paras. 19 and 20 of the Crown Reply; hereinafter, collectively, the “ <b>Reassessments</b> ”) and corresponding audit of EGR (the “ <b>Audit</b> ”), drafts thereof and emails enclosing issue sheets and drafts thereof, including, but not limited to, issue sheets delivered to CRA Headquarters officials	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 22 (assumptions)	<i>There is no standard CRA form entitled “issue sheet”. Can you please direct us to where you have seen this term used; otherwise, we are unable to respond further. Along the same lines, please see our response to item 23 below.</i>
<b>2</b>	<b>Briefing Notes:</b> All briefing notes with respect to the Audit or Reassessments of EGR, drafts thereof and emails enclosing briefing notes and drafts thereof, including, but not limited to briefing notes delivered to: CRA Headquarters officials, the CRA Commissioner, and the Minister of National Revenue CRA Headquarters officials	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 22 (assumptions)	<i>The Respondent does not agree to produce briefing notes, drafts (if applicable) or emails enclosing briefing notes.  Briefing notes are high level documents containing sensitive information pertaining to CRA Audit budgets, resources, tools, methods and techniques, as well as information pertaining to other taxpayers / registrants, that have nothing to do with the EGR Audit and Assessments under appeal.. The disclosure of briefing notes may prejudice the CRA and will not yield any new information relevant to the EGR Audit and EGR Assessments that has not already been disclosed to the Appellant elsewhere in the Respondent’s productions (e.g. in the EGR Audit Report and Position Paper). The Appellant’s request for high level briefing notes appears to constitute a fishing expedition. The basis for the (re)assessments under appeal are set out in the CRA EGR Audit Report and Position Paper, and the</i>

## “Schedule A”

	<b>EGR Request</b>	<b>EGR’s “Crown Reply Reference”</b>	<b>Crown Response/Position</b>
			<i>related documents which have already been disclosed to the Appellant.</i>
<b>3</b>	<b>T2020</b> – All T2020s (Memo for File) by Auditor(s) for the Audit	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 22 (assumptions)	<i>The Respondent will check to verify that all T2020s for the EGR Audit have been produced; any missing T2020s will be produced, subject to redactions. We currently estimate being able to do so by the end of June 2021. If this estimate changes, we will advise you.</i>
<b>4</b>	<b>Working Papers:</b> All Audit working papers with respect to the Audit	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 22 (assumptions)	<i>Most EGR Audit working papers (subject to redactions) have been produced. The Respondent will provide any missing EGR Audit working papers, with redactions as required. We anticipate being able to do so by the end of June 2021. However, if our estimate changes, we will advise you.</i>
<b>5</b>	<b>Third Party Communications:</b> All notes, whether hand-written or transcribed, regarding discussions with third parties interviewed by CRA concerning EGR or the alleged carousel scheme(s)	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 22 (assumptions)	<i>The Respondent has produced third party communications which formed part of the EGR Audit, subject to any necessary redactions to protect confidential third party information.</i>  <i>To the extent the Appellant seeks notes of interviews prepared by other CRA officers within the context of the 208 other audit files (not those of EGR) involved in the alleged carousel scheme, the Respondent believes that relevant notes have either been included in the CRA EGR Audit File or that the content of any such relevant discussions were described and summarized in the voluminous Audit Reports / Position Papers already produced by the Respondent</i>  <i>The Respondent’s current estimate is that a search of this magnitude will take at least a year, possibly even months longer.</i>



## “Schedule A”

	<b>EGR Request</b>	<b>EGR’s “Crown Reply Reference”</b>	<b>Crown Response/Position</b>
<b>6</b>	<b>Third Party Information:</b> All documents received from third parties with respect to the Audit, including but not limited to documents received from The Royal Canadian Mint, Asahi Refining Canada Ltd., Imperial Smelting (Umicore), Glencore and Oliver Jewellery	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 22 (assumptions)	<i>The Respondent will check to verify that all relevant documents received from the Royal Canadian Mint (“RCM”), Asahi Refining Canada Ltd., Imperial Smelting (Umicore), Glencore and Oliver Jewellery that are not privileged and/or subject to confidentiality have been produced; if not, the Respondent will endeavour to produce any missing documents by the end of June 2021. If this estimate changes, we will let you know.</i>  <i>Please note that certain RCM information was provided to the CRA EGR Auditor on condition of confidentiality and that the Respondent will not disclose such information absent consent received from the RCM or a Court order.</i>
<b>7</b>	<b>10 Missing Vendor Allegations:</b> All documents with respect of CRA’s allegations that EGR did not purchase gold from the “ <b>Missing Vendors</b> ” (as defined in subpara. 22.27 of the Crown Reply)	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal) Para. 19; subparagraphs 22.27 to 22.32 (“missing vendor” allegations)	<i>See our response to item 5 above regarding an estimated time of at least one year to complete any further investigation and review in this regard.</i>  <i>Audit reports have been or will be produced, subject to redactions, by the end of June 2021. If this estimate changes, we will let you know.</i>
<b>8</b>	<b>Research Centre:</b> Copies of all documents with respect to all requests and referrals made to the CRA’s Research Centre during the course of the Audit and all responses from the Research Centre and work product from the Research Centre	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 22 (assumptions)	<i>To the extent any such relevant documents were requested by the CRA EGR Auditor and received, those documents were included in EGR’s Audit File and have been produced.</i>
<b>9</b>	<b>Audit Plans:</b> All Audit Plans (and drafts thereof) in respect of the Audit (no Audit Plan has been disclosed for 2020)	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)	<i>The Respondent will produce any missing Audit Plans for the CRA EGR Audit, subject to any necessary redactions. We estimate being</i>

## “Schedule A”

	<b>EGR Request</b>	<b>EGR’s “Crown Reply Reference”</b>	<b>Crown Response/Position</b>
	Reassessments) and emails between CRA officials enclosing drafts	Para. 22 (assumptions)	<i>able to do so by the end of June 2021. If this estimate changes, we will advise you.</i>
<b>10</b>	<b>Penalty Recommendation Reports:</b> All Penalty Recommendation Reports (and drafts thereof) in respect of the Audit (no such report has been disclosed for 2019 Reassessments) and emails between CRA officials enclosing drafts	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 23 (facts re: gross negligence penalties)	<i>The Respondent will produce any missing Penalty Recommendation Reports regarding EGR, subject to any necessary redactions. We estimate being able to do so by the end of June 2021. If this estimate changes, we will advise you.</i>
<b>11</b>	<b>T134</b> – Referral to Criminal Investigations referenced in Auditor’s Report	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 22 (assumptions)	<i>The Respondent does not agree to produce any referral to Criminal Investigations, nor any response or correspondence, on the grounds of irrelevance. This appeal is a civil appeal to the Tax Court of Canada from GST/HST (re)assessments.</i>
<b>12</b>	<b>Response to Referral to Criminal Investigations</b> – All responses and correspondence from Criminal Investigations in respect of the referral of EGR to Criminal Investigations (T134)	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 22 (assumptions)	<i>See response to item 11.</i>
<b>13</b>	<b>Audit Report Drafts:</b> All drafts of Audit Reports (whether saved separately on a document filing system, enclosed as attachments to emails or exist elsewhere) and emails between CRA officials enclosing such drafts	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 22 (assumptions)	<i>The Respondent’s position is that drafts of Audit Reports and associated emails are irrelevant and that the Appellant is engaging in a fishing expedition. The Tax Court must decide whether the CRA Audit adjustments implemented through the (re)assessments which were issued by the Minister and which are under appeal are correct. Draft positions (if applicable) are irrelevant and moot to this determination. Without prejudice to the Respondent’s position, the Respondent understands that the CRA EGR Auditor did not keep any drafts in any event.</i>

## “Schedule A”

	<b>EGR Request</b>	<b>EGR’s “Crown Reply Reference”</b>	<b>Crown Response/Position</b>
<b>14</b>	<b>Position Paper Drafts:</b> All drafts of Position Papers (whether saved separately on a document filing system, enclosed as attachments to emails or exist elsewhere) and emails between CRA officials enclosing such drafts	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 22 (assumptions)	<i>See the response to item 13.</i>
<b>15</b>	<b>Scrap Gold Industry Fact Sheet Drafts:</b> All drafts of the Scrap Gold Industry Fact Sheet (R001013) (whether saved separately on a document filing system, enclosed as attachments to emails or exist elsewhere) and emails between CRA officials enclosing such drafts	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 22 (assumptions)	<i>See the response to item 13.</i>
<b>16</b>	<b>Basic communications:</b> All emails and records of other communications involving Jaclyn Bartlett, Cathy Gadzella, Gisele Wonta, Jolene Baines, Lyndon Osman and any other official at the Saskatchewan TSO regarding the Audit	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 22 (assumptions)	<i>The Respondent’s position is that any relevant emails were included in the CRA EGR Audit File, which has been disclosed.</i>  <i>The Respondent understands that Cathy Gadzella did not have any emails and that Jolene Baines did not come to the program until after the completion of the CRA EGR Audit. The Respondent will attempt to follow up with Gisele Wonta and Lyndon Osman to find out whether either of these individuals has any emails that may be relevant and will advise the Appellant of the Respondent’s position. The Respondent is unable to give the Appellant an estimate at this time of how long this may take.</i>
<b>II.</b>	<b>Documents in possession of other officials</b>		

## “Schedule A”

	<b>EGR Request</b>	<b>EGR’s “Crown Reply Reference”</b>	<b>Crown Response/Position</b>
<b>17</b>	<p><b>AGP BI Documents:</b> All documents with respect to AGP Business Intelligence's "several year" long risk assessment of the scrap gold industry (referenced at page 25 of R001100).</p>	<p>Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)</p> <p>Para. 4; subparas. 22.33 to 22.40 (alleged wilful blindness)</p>	<p><i>The referenced comment refers to how several entities were identified and screened for audit by BI. How and why various entities were screened for audit is irrelevant to this appeal. BI is the CRA’s method of researching and determining potential business entities for audit. BI information consists of internal audit policies and procedures, including, but not limited to, predictive analytics, risk assessment, data mining and data access and understanding, resources, methods, tools and techniques for selecting audit candidates. The disclosure of this information is not relevant and could be highly prejudicial to the CRA. The relevant information for the purposes of the (re)assessments under appeal is set out in the CRA EGR Audit Report and Position Paper. The Respondent does not agree to look for or produce such documents.</i></p>
<b>18</b>	<p><b>Documents from various CRA offices:</b> All documents, emails and records of other communications, in the possession of the CRA regarding EGR including, but not limited to, documents and emails with respect to:</p> <ul style="list-style-type: none"> <li>- the scrap gold industry</li> <li>- scrap gold volumes and purities</li> <li>- GST/HST leakage</li> </ul> <p>including, but not limited to documents in the possession of or authored by:</p> <ul style="list-style-type: none"> <li>- CRA Headquarters officials (including, but not limited to, Jennifer Ryan,</li> </ul>	<p>Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)</p> <p>Para. 22 (assumptions)</p>	<p><i>The Appellant’s request is extraordinarily broad in scope, requesting any documents, emails and records of communication “regarding EGR”. This request is unduly broad and constitutes a fishing expedition. The Respondent has produced the documents pertaining to the CRA Audit of EGR which led to the (re)assessments under appeal.</i></p> <p><i>See the response above to item 16 regarding emails of specific Saskatchewan TSO officials.</i></p> <p><i>See the response above to item 17 regarding BI.</i></p> <p><i>If the Appellant wishes the Respondent to verify that none of the other named individuals have any other undisclosed documents, emails or records <u>that are relevant to the Audit adjustments and (re)assessments under appeal in this case and which have not</u></i></p>

## “Schedule A”

	<b>EGR Request</b>	<b>EGR’s “Crown Reply Reference”</b>	<b>Crown Response/Position</b>
	<p>Vance Smith, Paul Stesco, Sylvain Lessard, Mario Duguay)</p> <ul style="list-style-type: none"> <li>- Toronto West TSO officials (including but not limited to Salome Callaghan, Frank Prizzon, James Gilbert, Brian Sanders, Lesley Baynes)</li> <li>- Toronto Centre TSO officials (including but not limited to Henry Pao, Amelia Liu)</li> </ul> <p>Saskatchewan TSO officials (including but not limited to Jaclyn Bartlett, Cathy Gadzella, Gisele Wonta, Jolene Baines, Lyndon Osmon)</p>		<p><i>already been produced to the Appellant, the Respondent will endeavour to do so, but is unable to give an estimate at this time of how long this may take.</i></p>
<b>19</b>	<p><b>Net Tax Refund Reviews:</b> All documents related to approval (or denial) of EGR’s net tax refund claims for each reporting period from June 2015 to October 2018, including but not limited to, documents from the CRA Refund Integrity Unit</p>	<p>Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)</p> <p>Para. 4; subparas. 22.33 to 22.40 (alleged wilful blindness)</p>	<p><i>The Respondent does not agree to conduct a search for or to disclose documents pertaining to periods of time outside the period under appeal, i.e. June 1, 2016 to July 31, 2018. Furthermore, unless the Appellant is able to specify what exactly it is asking for here and explain how the unspecified documentation is relevant, the Respondent does not agree to make any further inquiries. There was an audit conducted and completed, which led to the (re)assessments under appeal. The Audit Report and Position Paper have been provided to the Appellant.</i></p>
<b>20</b>	<p><b>EGR Volumes and Purities:</b> All documents that reference EGR’s scrap gold volumes and purities including, but</p>	<p>Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)</p>	<p><i>The Respondent has produced the CRA EGR Auditor’s documents referring to EGR’s scrap gold volumes and purities during the period under appeal. The Respondent does not agree to engage in a fishing</i></p>

## “Schedule A”

	<b>EGR Request</b>	<b>EGR’s “Crown Reply Reference”</b>	<b>Crown Response/Position</b>
	not limited to, documents authored by CRA Business Intelligence Officers (including both those that pre-date the Audit and those from the commencement of the Audit forward)	Para. 4; subparas. 22.33 to 22.40 (alleged wilful blindness)	<i>expedition looking for documents that did not form part of the CRA EGR Audit under appeal and which reference periods of time that are outside the period under appeal in this file. The CRA information pertaining to scrap gold volumes and purity levels of EGR gold during the appeal period are well documented in the CRA EGR Audit File, as well as in the Audit Reports and Position Papers of numerous other participants in the alleged carousel scheme. Please see the response to item 17 above detailing the Respondent’s objection to producing BI documents.</i>
<b>21</b>	<b>EGR Risk Assessments:</b> All risk assessment reports and other documents with respect to risk assessments for EGR, applicable from fiscal year end May 31, 2013 to May 31, 2019	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal) Para. 22 (assumptions)  Para. 4; subparas. 22.33 to 22.40 (alleged wilful blindness)	<i>The Respondent is not aware to what specific documents the Appellant is referring. Documents pertaining to periods of time preceding the appeal period are irrelevant, in any event. In addition, the Respondent adopts the same position as set out above in item 2 objecting to the production of briefing notes. The Respondent says any documents which exist pertaining to risk assessments are irrelevant. The disclosure of such information could be highly prejudicial to the CRA as well.</i>
<b>22</b>	<b>EGR Collection diaries:</b> All collection diaries (e.g., Automated Collections and Source Deductions Enforcement System (ACSES) diaries) with respect to EGR	Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)  Para. 4; subparas. 22.33 to 22.40 (alleged wilful blindness)	<i>The Respondent does not agree to look for, review or produce EGR Collection diaries. Collections actions, information or documents are irrelevant to this appeal. What is relevant are the CRA EGR Audit report and related documents that the CRA EGR Auditor prepared or reviewed in determining that EGR’s input tax credit claims ought to be denied. The Respondent has provided the Appellant with the CRA EGR Audit documentation.  What happens in terms of collection by the CRA is extraneous to the CRA EGR Audit and is irrelevant to the issues under appeal.</i>

## “Schedule A”

	<b>EGR Request</b>	<b>EGR’s “Crown Reply Reference”</b>	<b>Crown Response/Position</b>
<b>23</b>	<b>EGR Integras reports:</b> The summary report from Integras systems with respect to EGR	<p>Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)</p> <p>Para. 22 (assumptions)</p> <p>Para. 4; subparas. 22.33 to 22.40 (alleged wilful blindness)</p>	<p><i>The Respondent does not know to what alleged document or report the Appellant is referring. As mentioned in the response to item 22 above, the relevant CRA EGR Audit documentation and report has been provided to the Appellant. The Respondent cannot respond in a more meaningful manner without further information / details from the Appellant explaining what the Appellant is looking for.</i></p>
<b>24</b>	<p><b>Documents re: Third Parties:</b> All documents with respect to the “Scheme Participants” (as defined in subpara. 22.24 of the Crown Reply) and any person alleged to be involved in the alleged “<b>Carousel Scheme</b>” (as defined in subpara. 22.14 of the Crown Reply) (collectively, the “<b>Relevant Third Parties</b>”), including but not limited to:</p> <ul style="list-style-type: none"> <li>- All collection diaries (e.g., Automated Collections and Source Deductions Enforcement System (ACSES) diaries) (from 2013 to date)</li> <li>- All documents (from 2013 to date) with respect to compliance actions taken by the CRA with respect to the remittance of net tax by the Relevant Third Parties including, but not limited to, the CRA’s recovery or attempted recovery of debts of the Relevant</li> </ul>	<p>Paras. 2 to 17 (denial or lack of knowledge of most facts stated in Notice of Appeal)</p> <p>Paras. 22.41 and 22.42 (alleged GST/HST leakage)</p> <p>Para. 4; subparas. 22.33 to 22.40 (alleged wilful blindness)</p>	<p><i>The Respondent does not agree to produce the requested information on the grounds that the information sought is irrelevant. The Appellant is engaged in a fishing expedition of extraordinary breadth and scope – asking for the production of hundreds of third party tax returns and information regarding collections and compliance action with respect to hundreds of other entities – let alone asking for such irrelevant third party information and documentation well outside the appeal period.</i></p> <p><i>Information pertaining to third parties is confidential and the type of third party information sought by the Appellant is irrelevant. Section 295 of the Excise Tax Act prohibits its disclosure. For example, whether CRA was able to subsequently collect any money from any parties after the fact or what compliance actions the CRA has since taken regarding third parties is irrelevant to the issue of whether the Appellant was engaged in a carousel scheme during the appeal period and whether the alleged scrap gold transactions undertaken by the Appellant at that time were bona fides.</i></p> <p><i>The Respondent has provided (or will provide) the Appellant with the Audit Reports and Position Papers for other entities in the alleged</i></p>

## “Schedule A”

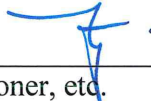
	<b>EGR Request</b>	<b>EGR’s “Crown Reply Reference”</b>	<b>Crown Response/Position</b>
	<p>Third Parties and the CRA’s actions taken to require GST/HST return filings and remittances in respect of same</p> <ul style="list-style-type: none"> <li>- All documents (from 2013 to date) with respect to allegations that GST/HST paid by EGR was not remitted to the CRA by the Relevant Third Parties</li> <li>- GST/HST returns of the Relevant Third Parties for each reporting period from June 2016 to December 31, 2019</li> <li>- All documents from the Système Universal Delpac System (SUDS) with respect to the Relevant Third Parties from June 1, 2015 to date</li> <li>- All documents related to GST/HST registration applications, verifications, registrations and de-registrations (where applicable) of the Relevant Third Parties</li> <li>- All documents with respect to CRA collections and enforcement actions taken by the CRA with respect to the Relevant Third Parties</li> </ul>		<p><i>carousel scheme. These are the documents which the Respondent says may potentially be relevant to this appeal.</i></p> <p><i>See the response to item 23 above. The Respondent does not know to what the Appellant refers in asking for “All summary reports from the Integras system with respect to each of the Relevant Third Parties”.</i></p>



“Schedule A”

	<b>EGR Request</b>	<b>EGR’s “Crown Reply Reference”</b>	<b>Crown Response/Position</b>
	<ul style="list-style-type: none"> <li>- All risk assessment reports and other documents with respect to risk assessments in respect of the Relevant Third Parties</li> </ul> <p>All summary reports from the Integras system with respect to each of the Relevant Third Parties</p>		

This is **Exhibit "H"** to the affidavit of Atef Salama sworn before me via Zoom this 3<sup>rd</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

SOEL TURGEON

Tax Court of Canada



Cour canadienne de l'impôt

Docket: 2020-1214(GST)G

BETWEEN:

EXPRESS GOLD REFINING LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Case Management Conference held by teleconference  
on May 6, 2021, at Ottawa, Ontario

Before: The Honourable Justice B. Russell

Participants:

Counsel for the Appellant:	Jacques Bernier Bryan Horrigan
Counsel for the Respondent:	Marilyn Vardy

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ORDER

WHEREAS a case management conference was held by telephone on May 6, 2021;

AND UPON hearing respective counsel;

THIS COURT ORDERS THAT:

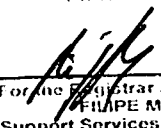
1. The parties are to determine by June 30, 2021 if there is agreement regarding further documentary disclosure prior to conduct of discovery examinations.

2. The parties are to advise the Registry by July 7, 2021 whether there is agreement regarding further documentary disclosure prior to conduct of discovery examinations and if so whether additional time is required to complete such disclosure.
3. If agreement between the parties has not been achieved, the Appellant may by July 30, 2021 file and serve a motion seeking additional documentary disclosure, intended to be returnable between September 7 and 15, 2021.

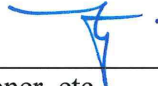
Signed at Halifax, Nova Scotia, this 11<sup>th</sup> day of May 2021.

“B. Russell”

Russell J.

I HEREBY CERTIFY that the above document is a true copy of the original filed at the Registry of the Tax Court of Canada. J'ÉCARTIFIE que le document ci-dessus est une copie conforme à l'original déposé au greffe de la Cour canadienne de l'impôt.	
Dated:	MAY 18 2021
Fait le:	MAY 18 2021
	
For the Registrar / Pour le greffier FILIPPE MENDES General Support Services Clerk / Commis général, Service de soutien	

This is **Exhibit "I"** to the affidavit of Atef Salama sworn before me via Zoom this 3<sup>rd</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

Joel Turgeon

**Joel Turgeon**

---

**De:** Horrigan, Bryan <Bryan.Horrigan@bakermckenzie.com>  
**Envoyé:** 3 mai 2021 11:50  
**À:** Vardy, Marilyn  
**Cc:** Aird, Diana; Mann, Jasmeen; Ding, Michael; Bernier, Jacques  
**Objet:** Express Gold Refining Ltd v HMQ - 2020-1214(GST)G

Hi Marilyn,

We are reaching out to arrange a call with you in advance of the Case Management Conference scheduled for this Thursday. The purpose of the call would be to discuss our April 23, 2021 letter to you regarding the Respondent's scope of productions as well as a proposed timetable, as instructed by Justice Russell. In terms of that timetable, we propose the following:

Step	Deadline
Additional disclosure from Respondent and resolving related issues	May 31, 2021
Complete Examinations for Discovery	July 31, 2021
Satisfy undertakings, if any	August 31, 2021
Communicate questions arising from undertakings, if any	September 15, 2021
Provide answers to questions arising from undertakings, if any	September 30, 2021
Resolution of issues arising from Examinations for Discovery, if any	September 30, 2021
Formal Application to fix hearing	September 30, 2021

We generally have good availability tomorrow after 10:30 am and Wednesday after 2:30 pm. Please let us know what can work for you. We look forward to discussing the above items with you and continuing to engage in helpful dialogue to move this matter forward on an efficient basis.

(As an aside, we expect to have a response to you later today addressing Diana's April 28 letter to us regarding technical/logistical issues re: productions.)

Best regards,

**Bryan Horrigan** ([Bio](#))  
Indirect Tax Lawyer  
Baker & McKenzie LLP  
181 Bay Street, Suite 2100  
Toronto, ON M5J 2T3  
Canada  
Tel: +1 416 863 1221  
Direct: +1 416 865 3905  
Fax: +1 416 863 6275  
[bryan.horrigan@bakermckenzie.com](mailto:bryan.horrigan@bakermckenzie.com)



[bakermckenzie.com](http://bakermckenzie.com) | [Facebook](#) | [LinkedIn](#) | [Twitter](#)

This is **Exhibit "J"** to the affidavit of Atef Salama sworn before me via Zoom this 3<sup>rd</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

JOEL TURGEON



Department of Justice  
Canada

Ministère de la Justice  
Canada

Ontario Regional Office  
National Litigation Sector  
120 Adelaide Street West Suite  
#400  
Toronto, ON M5H 1T1

Région de l'Ontario  
Secteur national du contentieux  
120, rue Adelaide ouest, pièce 400  
Toronto (Ontario) M5H 1T1

Telephone/Téléphone: 647-256-7454  
Fax /Télécopieur: (416) 973-0810  
Email/Courriel: Marilyn.Vardy@justice.gc.ca  
Our File Number: LEX-500025225

**BY EMAIL**

May 5, 2021

Baker & McKenzie LLP  
Brookfield Place  
181 Bay Street  
Suite 2100  
Toronto, Ontario  
M5J 2T3

**Attention: Jacques Bernier and Bryan Horrigan**

Dear Counsel:

**Re: EXPRESS GOLD REFINING LTD. v. H.M.Q.  
Court File No.:2020-1214(GST)G**

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We write further to Mr. Horrigan's email of May 3, 2021 setting out the Appellant's proposed litigation timetable. The Respondent cannot agree to the Appellant's proposed timetable, which is neither realistic nor feasible / "do"able from the Respondent's point of view:

- This is an extremely complex GST/HST appeal involving huge amounts of tax – that fact alone makes it imperative that the parties be given sufficient time to properly prepare for and conduct the various stages of litigation for such an important file;
- There is a substantial volume of documentation that has already been produced by the parties. While the Appellant may have previously provided certain documentation to the CRA and had previous interactions with the CRA (or Department of Finance), DOJ counsel were not privy to those interactions at the time. It is imperative in a file of this complexity and magnitude that the Respondent's counsel be given sufficient time to properly inform themselves and prepare for the next steps in the litigation.
- The scope of any remaining documentary disclosure to be completed is fluid and uncertain at this juncture. The Appellant has made broad requests for yet further extensive documentary production. DOJ counsel and staff will require an adequate and reasonable amount of time to properly investigate whether any further documentary disclosure is warranted, and if so, to review that information. DOJ staff and IT personnel require an adequate and reasonable amount of time to carry out the various IT processes that are required in order to upload, code and produce any such further documentation.



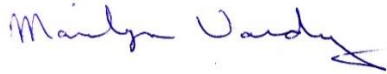
- DOJ counsel and staff do not have infinite resources and hours; neither do the CRA officers and staff with whom the DOJ must conduct any further inquiries. There are many other files and many other complex, document-intensive files in our offices, which also consume valuable DOJ staff resources.
- CRA officers are located in geographically different areas of the country and are not located in Toronto, where DOJ counsel and staff are located.
- Judicial notice may also be taken of the ongoing global pandemic and the public health care measures and restrictions in effect, for example, in Ontario, which have placed unprecedented restrictions and limitations on the ability of DOJ counsel and staff and of CRA to perform their work and duties. For example, access to office premises is severely limited and access to online systems for which there is a much heightened demand, is also restricted. Prior authorizations and approvals have to be secured and it may take staff and CRA officers weeks in order to obtain the necessary approvals and access required to respond to requests for information and documentation and to upload information to secure electronic systems.
- DOJ counsel, like other individuals in the GTA area, must work from home and may have unprecedented child care or family responsibilities that place an added strain on counsel's time and resources.
- The CRA is the Appellant's principal creditor and is not pursuing collections action against the Appellant while the Tax Court litigation continues. The Appellant has sought and received protection under the CCAA permitting it to continue to operate and to carry on business in the meantime. The Appellant has agreements with vendors whereby the Appellant is not required to pay GST/HST to those vendors prior to receiving net tax refunds from the Receiver General.
- The litigation in this case continues to move along and the Respondent submits that in a case of this magnitude and complexity, the expectation that discoveries could take a couple of years to complete is reasonable.

The Respondent therefore proposes the following timetable:

- Parties to determine whether agreement is possible regarding the scope of any further documentary disclosure by the end of June 2021;
- Parties to advise Case Management Judge whether they have been able to reach an agreement in principle regarding the scope of any further documentary disclosure by July 7, 2021 and if so, to advise the Case Management Judge of how much additional time will be required in order to complete documentary disclosure – the length of time will depend on the scope of any remaining documentary disclosure to be completed;

- If parties are not able to reach an agreement, then they may seek guidance from the Case Management Judge by way of motion to be filed and served on or before September 15, 2021;
- Parties to complete further documentary disclosure (if and as applicable) within the time to be determined by the parties and /or the Case Management Judge following a final disposition of the motion (or any appeal therefrom).
- Examinations for discovery to be completed within 6 to 8 months following the conclusion of the documentary disclosure process;
- Answers to undertakings to be completed within 60 days following the conclusion of the examinations for discovery;
- Follow-up questions to be exchanged within 30 days of receipt of the answers to undertakings;
- Answers to follow-up questions to be completed within 30 days of receipt of the follow-up questions;
- Parties to submit request for hearing dates from the Tax Court within 30 days of receipt of the answers to follow-up questions (subject to any disputes / motions that arise in connection with discovery questions and answers).

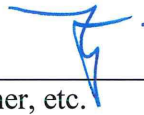
Sincerely,



Marilyn Vardy  
General Counsel  
Tax Law Services Division

cc: Diana Aird, Jasmeen Mann, Michael Ding, Department of Justice – Counsel for the Respondent (*by email*)

This is **Exhibit "K"** to the affidavit of Atef Salama sworn before me via Zoom this 3<sup>rd</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

Joël Torgeow



Baker & McKenzie LLP  
Barristers & Solicitors

Brookfield Place  
Bay/Wellington Tower  
181 Bay Street, Suite 2100  
Toronto, ON M5J 2T3  
Canada

Tel: +1 416 863 1221  
Fax: +1 416 863 6275  
www.bakermckenzie.com

**Asia Pacific**

Bangkok  
Beijing  
Brisbane  
Hanoi  
Ho Chi Minh City  
Hong Kong  
Jakarta  
Kuala Lumpur\*  
Manila\*  
Melbourne  
Seoul  
Shanghai  
Singapore  
Sydney  
Taipei  
Tokyo  
Yangon

**Europe, Middle East  
& Africa**

Abu Dhabi  
Almaty  
Amsterdam  
Antwerp  
Bahrain  
Barcelona  
Berlin  
Brussels  
Budapest  
Cairo  
Casablanca  
Doha  
Dubai  
Dusseldorf  
Frankfurt/Main  
Geneva  
Istanbul  
Jeddah\*  
Johannesburg  
Kyiv  
London  
Luxembourg  
Madrid  
Milan  
Moscow  
Munich  
Paris  
Prague  
Riyadh\*  
Rome  
St. Petersburg  
Stockholm  
Vienna  
Warsaw  
Zurich

**The Americas**

Bogota  
Brasilia\*\*  
Buenos Aires  
Caracas  
Chicago  
Dallas  
Guadalajara  
Houston  
Juarez  
Lima  
Los Angeles  
Mexico City  
Miami  
Monterrey  
New York  
Palo Alto  
Porto Alegre\*\*  
Rio de Janeiro\*\*  
San Francisco  
Santiago  
Sao Paulo\*\*  
Tijuana  
Toronto  
Valencia  
Washington, DC

\* Associated Firm  
\*\* In cooperation with  
Trench, Rossi e Watanabe  
Advogados

March 28, 2019

Our ref: 10008358-92252669-000001

Director, ATIP Directorate  
Canada Revenue Agency  
555 MacKenzie Avenue  
5th Floor  
Ottawa, Ontario K1A 0L5

By courier

Dear Sir/Madam

**RE: ATIA request on behalf of Express Gold Refining Ltd.  
Fed. Business No. 13855 7095 RT0001  
ON Corp No. 1084754**

We write to request access to records on behalf of our client, Express Gold Refining Ltd. ("EGR"), a corporation present in Canada, under the *Access to Information Act* and the *Access to Information Act Extension Order, No. 1*. We enclose a corresponding corporation profile report, an authorization letter signed by a representative of EGR, and the requisite \$5.00 cheque payable to the Receiver General for Canada to cover initial processing costs.

We hereby request and wish to receive copies of the following original documents: all records from/to any Canada Revenue Agency ("CRA") employee relating to EGR, from December 1, 2013 through to the present day.

For the avoidance of doubt, EGR is requesting all responsive records, including: letters, memoranda, working papers, worksheets, emails, messages (voicemail, text, or otherwise), and notes from any meetings. To assist in your collection of these records, but without restricting the scope of this request, please note that EGR is requesting all such records relating to any review, audit, examination or investigation by the CRA concerning EGR and dealing with any proposed or actual Goods and Services Tax/Harmonized Sales Tax/Retail Sales Tax/Quebec Sales Tax audits, adjustments/readjustments or assessments/reassessments, and the collection and remittance of any such tax amounts from or in respect of EGR. By way of further assistance,



EGR is specifically requesting any such records from the files of the following current or former CRA employees:<sup>1</sup>

- 1) Rick Phillips, Belleville Tax Services Office ("TSO");
- 2) Mario Duguay, Aggressive GST/HST Planning Section;
- 3) Amelia Liu, Toronto Centre TSO;
- 4) Henry Pao, Toronto Centre TSO;
- 5) Samole Callaghan, Toronto West Thunder Bay TSO;
- 6) Brian Sanders, Toronto West Thunder Bay TSO;
- 7) Jaclyn Bartlett, Saskatchewan TSO
- 8) Cathy Gadzella, Saskatchewan TSO,
- 9) Steve Tiessen, Business Intelligence and Quality Assurance Division;
- 10) Yogesh Patel, National AGP Program
- 11) Jim Gilbert, National AGP Program;
- 12) Stephen Kleinschmidt, Hamilton TSO;
- 13) Debra Potter, Hamilton TSO;
- 14) Sheila Collings, St. Catharines TSO;
- 15) Jerry Vandenberg, St. Catherines TSO;
- 16) Robert Balinda, Toronto Centre TSO;
- 17) Raj Bhatla, Toronto Centre TSO;
- 18) Derek Chen, Toronto Centre TSO;
- 19) Dwayne Jhagru, Toronto Centre TSO;
- 20) T. Kerr (Collections), Toronto Centre TSO;
- 21) H. Liu (Audit or Collections), Toronto Centre TSO;
- 22) Jim McNamara, Toronto Centre TSO;

---

<sup>1</sup> Although the complete list of relevant CRA employees and their current positions is unknown, we have identified the below individuals' last known CRA office/branch/division.



- 23) Patricia Northey, Toronto Centre TSO;
- 24) Suzanne Roche, Toronto Centre TSO;
- 25) Barbara Sansome, Toronto Centre TSO;
- 26) Andy Schmaus, Toronto Centre TSO;
- 27) Joanne Todesco, Toronto Centre TSO;
- 28) Giuseppe Tucci, Toronto Centre TSO;
- 29) Rebecca Duncan, Toronto North TSO;
- 30) A. Jabari (Commercial Insolvency Unit), Toronto North TSO;
- 31) Anne Mayo, Toronto North TSO;
- 32) Ron Persaud, Toronto North TSO;
- 33) Michelle Kwon, Toronto West TSO;
- 34) Frank Prizzon, National AGP Program;
- 35) Brian McCauley, CRA Headquarters;
- 36) Wayne Mousseau, CRA Headquarters;
- 37) Cindy Negus, CRA Headquarters;
- 38) Lisa Anawati, GST/HST Rulings Directorate at CRA Headquarters;
- 39) Oumeima Awada, GST/HST Rulings Directorate at CRA Headquarters;
- 40) Luba Baran, GST/HST Rulings Directorate at CRA Headquarters;
- 41) Ivan Bastasic, GST/HST Rulings Directorate at CRA Headquarters;
- 42) Pierre Bertrand, GST/HST Rulings Directorate at CRA Headquarters;
- 43) Danielle Lafleche, GST/HST Rulings Directorate at CRA Headquarters;
- 44) William Parker, GST/HST Rulings Directorate at CRA Headquarters;
- 45) Dawn Weisberg, GST/HST Rulings Directorate at CRA Headquarters;
- 46) Vance Smith, GST/HST Refund Integrity Section;



We would like to receive the responsive documents in electronic form. In addition, to the extent possible, we ask that this request be processed on a rush basis.

Please do not hesitate to contact me should you have any questions or concerns regarding the scope of this request so that we may work together to ensure that it is processed in an efficient and timely manner.

Yours truly,

A handwritten signature in blue ink, appearing to read "Bryan Horrigan".

Bryan Horrigan  
Associate

416-865-3905  
bryan.horrigan@bakermckenzie.com

Encl

Request ID: 022877143  
 Transaction ID: 71247186  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2019/03/26  
 Time Report Produced: 13:41:02  
 Page: 1

## CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>	<b>Incorporation Date</b>
1084754	EXPRESS GOLD REFINING LTD.	1994/06/10
		<b>Jurisdiction</b>
		ONTARIO
<b>Corporation Type</b>	<b>Corporation Status</b>	<b>Former Jurisdiction</b>
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
<b>Registered Office Address</b>		<b>Date Amalgamated</b>
215 VICTORIA STREET		NOT APPLICABLE
<b>Suite # 400</b>		<b>New Amal. Number</b>
TORONTO		NOT APPLICABLE
ONTARIO		<b>Notice Date</b>
CANADA M5B 1T9		NOT APPLICABLE
<b>Mailing Address</b>		<b>Letter Date</b>
ATEF SALAMA		NOT APPLICABLE
215 VICTORIA ST		<b>Revival Date</b>
<b>Suite # 400</b>		NOT APPLICABLE
TORONTO		<b>Transferred Out Date</b>
ONTARIO		NOT APPLICABLE
CANADA M5B 1T9		<b>EP Licence Eff.Date</b>
		NOT APPLICABLE
		<b>EP Licence Term.Date</b>
		NOT APPLICABLE
		<b>Date Commenced in Ontario</b>
		NOT APPLICABLE
		<b>Date Ceased in Ontario</b>
		NOT APPLICABLE
<b>Activity Classification</b>	<b>Number of Directors</b>	
NOT AVAILABLE	<b>Minimum</b>	
	00001	
	<b>Maximum</b>	
	00010	



Request ID: 022877143  
Transaction ID: 71247186  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/03/26  
Time Report Produced: 13:41:02  
Page: 2

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

1084754

**Corporation Name**

EXPRESS GOLD REFINING LTD.

**Corporate Name History**

EXPRESS GOLD REFINING LTD.

**Effective Date**

1994/06/10

**Current Business Name(s) Exist:**

NO

**Expired Business Name(s) Exist:**

NO

**Administrator:  
Name (Individual / Corporation)**

NABIL  
SALAMA

**Address**

9 TRUMAN RD  
  
TORONTO  
ONTARIO  
CANADA M2L 2L4

**Date Began**

2000/05/31

**First Director**

NOT APPLICABLE

**Designation**

DIRECTOR

**Officer Type**

**Resident Canadian**

Y

Request ID: 022877143  
Transaction ID: 71247186  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/03/26  
Time Report Produced: 13:41:02  
Page: 3

## CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>
1084754	EXPRESS GOLD REFINING LTD.

<b>Administrator: Name (Individual / Corporation)</b>	<b>Address</b>
NABIL SALAMA	9 TRUMAN RD  TORONTO ONTARIO CANADA M2L 2L4

<b>Date Began</b>	<b>First Director</b>	
2000/05/31	NOT APPLICABLE	
<b>Designation</b>	<b>Officer Type</b>	<b>Resident Canadian</b>
OFFICER	PRESIDENT	Y

<b>Administrator: Name (Individual / Corporation)</b>	<b>Address</b>
MARY SALAMA	9 TRUMAN RD  TORONTO ONTARIO CANADA M2L 2L4

<b>Date Began</b>	<b>First Director</b>	
2000/05/31	NOT APPLICABLE	
<b>Designation</b>	<b>Officer Type</b>	<b>Resident Canadian</b>
DIRECTOR		Y

Request ID: 022877143  
Transaction ID: 71247186  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/03/26  
Time Report Produced: 13:41:02  
Page: 4

## CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>
1084754	EXPRESS GOLD REFINING LTD.

<b>Administrator: Name (Individual / Corporation)</b>	<b>Address</b>
MARY SALAMA	9 TRUMAN RD  TORONTO ONTARIO CANADA M2L 2L4

<b>Date Began</b>	<b>First Director</b>	<b>Resident Canadian</b>
2000/05/31	NOT APPLICABLE	
<b>Designation</b>	<b>Officer Type</b>	<b>Resident Canadian</b>
OFFICER	TREASURER	Y

<b>Administrator: Name (Individual / Corporation)</b>	<b>Address</b>
ATEF SALAMA	11 TRUMAN RD  TORONTO ONTARIO CANADA M2L 2L4

<b>Date Began</b>	<b>First Director</b>	<b>Resident Canadian</b>
2008/06/28	NOT APPLICABLE	
<b>Designation</b>	<b>Officer Type</b>	<b>Resident Canadian</b>
OFFICER	VICE-PRESIDENT	

Request ID: 022877143  
Transaction ID: 71247186  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/03/26  
Time Report Produced: 13:41:02  
Page: 5

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

1084754

**Corporation Name**

EXPRESS GOLD REFINING LTD.

**Administrator:  
Name (Individual / Corporation)**

ATEF  
SALAMA

**Address**

11 TRUMAN RD  
  
TORONTO  
ONTARIO  
CANADA M2L 2L4

**Date Began**

2010/10/01

**First Director**

NOT APPLICABLE

**Designation**

DIRECTOR

**Officer Type**

**Resident Canadian**

Request ID: 022877143  
Transaction ID: 71247186  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/03/26  
Time Report Produced: 13:41:02  
Page: 6

## CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1084754

EXPRESS GOLD REFINING LTD.

### Last Document Recorded

Act/Code	Description	Form	Date
CIA	ANNUAL RETURN 2018	1C	2018/12/09 (ELECTRONIC FILING)

**THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.**

**ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.**

The issuance of this report in electronic form is authorized by the Ministry of Government Services.



## Express Gold Refining Ltd.

Precious Metals Dealer • Refining • Assaying

March 27, 2019

Director, ATIP Directorate  
Canada Revenue Agency  
555 MacKenzie Avenue, 5th Floor  
Ottawa ON K1A 0L5

Via fax: 613-941-9395

Dear Sir/Madam,

**Re: Express Gold Refining Ltd. Authorization re: ATIA request  
Fed. Business No. 13855 7095 RT0001  
ON Corp No. 1084754**

I am the Vice President of Express Gold Refining Ltd. ("EGR") and I am writing pursuant to the request for documents and information referable to EGR submitted by EGR's lawyers, Baker & McKenzie LLP ("**Baker McKenzie**"), pursuant to *Access to Information Act* and the *Access to Information Act Extension Order, No. 1*.

EGR hereby authorizes the Canada Revenue Agency to release to Baker McKenzie any documents and information relating to EGR.

Please contact me if you have any questions.

Yours very truly,

Atef Salama,  
Vice President, Express Gold Refining Ltd.

**BAKER & MCKENZIE LLP**  
**HSBC OPERATING ACCOUNT - CAD**

DATE: Mar 27, 2019

PAYEE: Receiver General for Canada

[Motion Record Page No. 149]

VENDOR ID: 5000078180

CHEQUE NO: 157201

INVOICE DATE	VENDOR INVOICE	COMMENTS	AMOUNT
Mar 27, 2019	032719EXPRESS	Access to Information Act	\$ 5.00
<b>TOTAL</b>			<b>\$ 5.00</b>

MP THIS DOCUMENT CONTAINS SECURITY FEATURES - SEE REVERSE / CE DOCUMENT CONTIENT DES CARACTÉRISTIQUES DE SÉCURITÉ - VOIR À L'ENVERS MI

**BAKER & MCKENZIE LLP**  
 181 BAY STREET  
 BROOKFIELD PLACE, SUITE 2100  
 TORONTO ON M5J 2T3

HSBC BANK CANADA  
 70 YORK ST  
 TORONTO M5J 1S9

**CHEQUE NO : 157201**

**DATE : 2019 03 27**  
 YYYY MM DD

**HSBC OPERATING ACCOUNT - CAD**


**CHEQUE AMOUNT**

PAY FIVE and 00/100 Dollar

\$ \*\*\*\*\*5.00

TO THE Receiver General for Canada  
 ORDER OF 555 MacKenzie Avenue, 5th Floor  
 Ottawa ON K1A 0L5

This is **Exhibit "L"** to the affidavit of Atef Salama sworn before me via Zoom this 3<sup>rd</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

Joël Torgeon





April 8, 2019

Our file  
A-2019-109892  
Your file  
10008358-92252669-000001

Baker & McKenzie LLP  
C/o Bryan Horrigan  
Brookfield Place  
Bay/Wellington Tower  
2100-181 Bay Street  
Toronto ON M5J 2T3

Dear Bryan Horrigan:

On April 1, 2019, we received your request under the Access to Information Act on behalf of your client, Express Gold Refining Ltd., for information about:

**See the attached appendix**

We will send you a reply to your request as soon as possible.

If you have any questions, you can write to the Access to Information and Privacy Directorate at 305 René-Lévesque Boulevard West, 9th Floor, Post Office Box 28, Montréal, Québec, H2Z 1A6, or send a fax to 514-283-7184. You can also leave a message at 514-283-2551 and an agent will call you back. Always mention file number **A-2019-109892**.

Sincerely,

Arnaud Berbery  
Senior Consultant  
Access to Information and Privacy Directorate  
Regional Operations Case Division / Montreal

Enclosure

## Appendix

<b>Information Requested</b>
Express Gold Refining Ltd. BN: XXXXX X095 RT0001
<b>Period: December 1, 2013 through to the present day.</b>
<p><b>Request:</b> We hereby request and wish to receive copies of the following original documents: all records from/to any Canada Revenue Agency ("CRA") employee relating to EGR (Express Gold Refining Ltd.), from December 1, 2013 through to the present day.</p> <p>For the avoidance of doubt, EGR is requesting all responsive records, including: letters, memoranda, working papers, worksheets, emails, messages (voicemail, text, or otherwise), and notes from any meetings. To assist in your collection of these records, but without restricting the scope of this request, please note that EGR is requesting all such records relating to any proposed or actual Goods and Services Tax/Harminozed Sales Tax/Retail Sales Tax/Quebec Sales Tax audits. adjustments/readjustments or assessments/reassessments, and the collection and remittance of any such tax amounts from or in respect of EGR.</p> <p>EGR is specifically requesting any such records from the files of the following current or former CRA employees:</p> <ol style="list-style-type: none"> <li>1) Rich Phillips, Belleville Tax Services Office ("TSO")</li> <li>2) Mario Duguay, Aggressive GST/HST Planning Section</li> <li>3) Amelia Liu, Toronto Centre TSO;</li> <li>4) Henry Pao, Toronto Centre TSO;</li> <li>5) Samole Callaghan, Toronto West Thunder Bay TSO;</li> <li>6) Brian Sanders, Toronto West Thunder Bay TSO;</li> <li>7) Jaclyn Barlett, Saskatchewan TSO;</li> <li>8) Cathy Gadzella, Saskatchewan TSO;</li> <li>9) Steve Tiessen, Business Intelligence and Quality Assurance Division;</li> <li>10) Yogesh Patel, National AGP Program;</li> <li>11) Jim Gilbert, National AGP Program;</li> <li>12) Stephen Kleinschmidt, Hamilton TSO;</li> <li>13) Debra Potter, Hamilton TSO;</li> <li>14) Sheila Collings, St. Catharines TSO;</li> <li>15) Jerry Vandenberg, St. Catharines TSO;</li> <li>16) Robert Balinda, Toronto Centre TSO;</li> <li>17) Raj Bhatla, Toronto Centre TSO;</li> <li>18) Derek Chen, Toronto Centre TSO;</li> <li>19) Dwayne Jhagru, Toronto Centre TSO;</li> <li>20) T.Kerr (Collections), Toronto Centre TSO;</li> </ol>



- 21) H. Liu (Audit or Collections, Toronto Centre TSO;
- 22) Jim McNamara, Toronto Centre TSO;
- 23) Patricia Northey, Toronto Centre TSO;
- 24) Suzanne Roche, Toronto Centre TSO;
- 25) Barbara Sansome, Toronto Centre TSO;
- 26) Andy Schmaus, Toronto Centre TSO;
- 27) Joanne Todesco, Toronto Centre TSO;
- 28) Giuseppe Tucci, Toronto Centre TSO;
- 29) Rebecca Duncan, Toronto North TSO;
- 30) A. Jabari (Commercial Insolvency Unit), Toronto North TSO;
- 31) Anne Mayo, Toronto North TSO;
- 32) Ron Persaud, Toronto North TSO;
- 33) Michelle Kwon, Toronto West TSO;
- 34) Frank Prizzon, National AGP Program;
- 35) Brian McCauley, CRA Headquarters;
- 36) Wayne Mousseau, National AGP Program;
- 37) Cindy Negus, CRA Headquarters;
- 38) Lisa Anawati, GST/HST Rulings Directorate at CRA Headquarters;
- 39) Oumeina Awada, GST/HST Rulings Directorate at CRA Headquarters;
- 40) Luba Baran, GST/HST Rulings Directorate at CRA Headquarters;
- 41) Ivan Bastasic, GST/HST Rulings Directorate at CRA Headquarters;
- 42) Pierre Bertrand, GST/HST Rulings Directorate at CRA Headquarters;
- 43) Danielle Lafleche, GST/HST Rulings Directorate at CRA Headquarters;
- 44) William Parker, GST/HST Rulings Directorate at CRA Headquarters;
- 45) Dawn Weisberg, GST/HST Rulings Directorate at CRA Headquarters;
- 46) Vance Smith, GST/HST Refund Integrity Section.

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36**

**AND IN THE MATTER OF A COMPROMISE OR ARRANGEMENT OF  
EXPRESS GOLD REFINING LTD.**

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
**Proceeding commenced in TORONTO**

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**AFFIDAVIT OF ATEF SALAMA**  
**(Sworn June 3, 2021)**

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Lawyers for the applicant, Express Gold Refining Inc.

**TAB 3**

Draft order

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) TUESDAY, THE 8<sup>th</sup>  
 )  
JUSTICE McEWEN ) DAY OF JUNE, 2021  
 )

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
(the "**CCAA**")

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF EXPRESS GOLD REFINING LTD.  
(the "**Applicant**")

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**ORDER**  
**(extension of stay period)**

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THIS MOTION by the Applicant pursuant to the CCAA was heard before me on June 8, 2021 at 330 University Avenue, Toronto, by videoconference due to the COVID-19 pandemic.

ON READING the materials filed including the affidavit of Atef Salama sworn June 3, 2021 and the exhibits thereto (the "**Salama June Affidavit**"), and on reading the fifth report (the "**Fifth Report**") of Deloitte Restructuring Inc. in its capacity as court-appointed monitor (in such capacity, the "**Monitor**"), and on hearing the submissions of counsel for the Applicant, the Monitor, and such other counsel as were present as may be indicated on the counsel slip, no one else appearing despite being served as appears from the affidavit of service, filed:

1. THIS COURT ORDERS that the time for service of the motion record in respect of this motion and the Fifth Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.
  
  2. THIS COURT ORDERS that the “Stay Period” defined in the second amended and restated initial order made by this court on October 27, 2020 in this file is hereby extended to and including September 10, 2021.
  
  3. This order is effective as of its date and does not need to be entered.
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF EXPRESS GOLD REFINING LTD.**

---

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
**Proceeding commenced in TORONTO**

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**ORDER**  
**(extension of stay period)**

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Lawyers for the Applicant, Express Gold Refining Ltd.



**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF EXPRESS GOLD REFINING LTD.**

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
**Proceeding commenced in TORONTO**

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**MOTION RECORD**  
**(extension of stay period)**  
**(returnable June 8, 2021)**

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