

FORCE FILED

NO. S-224444
VANCOUVER REGISTRY

THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF
CANADIAN DEHUA INTERNATIONAL MINES GROUP INC., WAPITI COKING COAL
MINES CORP., AND CANADIAN BULLMOOSE MINES CO., LTD.

PETITIONER

NOTICE OF APPLICATION

Name of applicant: Karen Fellowes, K.C., of Stikeman Elliott LLP

To: the Service List as set out in **Schedule "A"**

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on January 13, 2025 at 9:45 am for the orders set out in Part 1 below.

The applicant estimate that the application will take 20 minutes.

This matter is **not** within the jurisdiction of an Associate Judge. Justice Walker is seized of the CCAA proceeding.

Part 1: ORDERS SOUGHT

1. The applicant, Karen Fellowes, K.C., former counsel for TaneMahuta Capital Ltd., applies for:
 - a. an adjournment of the December 31, 2024 Notice of Application filed by Qu Bo Liu and now scheduled for January 13, 2025 insofar as that application relates to costs; and
 - b. such order as may be necessary abridging the time for filing and service requirements under the *Supreme Court Civil Rules* in order to have this application heard on January 13, 2025; and



- c. such further and other relief as counsel may request and this Honourable Court deems just.

Part 2: FACTUAL BASIS

2. By application filed December 31, 2024, Qu Bo Liu, a shareholder and director of the debtor in these CCAA proceedings, seeks an order that counsel appearing for a time in this matter for TaneMahuta Capital Ltd. (“TMC”) personally pay “*full indemnity*” costs potentially totalling hundreds of thousands of dollars but without assessment.^[1]
3. The basis for seeking that extraordinary relief is said to be twofold:
 - a. counsel for TMC sought to “*deceive the court into believing that TaneMahuta was the actual bidder and conceal the involvement of West Moberly*”^[2]; and
 - b. counsel for TMC made “*numerous, unfounded... allegations... of serious misconduct*” against Mr. Fraser and Ms. Liu.^[3]
4. While not entirely clear, it appears from her application that Mrs. Liu seeks not only to have her costs paid by counsel (on a “*full indemnity*” basis, and without assessment) but also those of the monitor, the debtor and their counsel, for the period between August 30 (or October 30^[4]), 2024 and the completion of her application. Neither the debtor CDI nor the monitor have applied for similar relief.
5. Ms. Fellowes respectfully asks that Ms. Liu’s application concerning costs be adjourned.
 - a. January 13 and 14, 2025 appear to have been set aside simply to address the competing bids. While that appears a reasonable estimate (particularly in light of the time occupied by the October motions), the cost sanctions Mrs. Liu now seeks will undoubtedly require additional time not yet reserved.
 - b. Ms. Fellowes is not a party to this proceeding. She has not appeared in this proceeding since October 2024 and was replaced as counsel mid-November 2024.
 - c. Mrs. Liu’s unfiled materials were emailed to Ms. Fellowes on December 30, 2024 at 7:17 p.m. Filed copies were sent by email the next day. But Ms. Fellowes is not a party in these proceedings. She had no email address for delivery in this action. Presumably this caused Mrs. Liu to send the process

^[1] Liu Notice of Application, paras. 78 and 88

^[2] Liu Notice of Application, para 84

^[3] Liu Notice of Application, para 95

^[4] Liu Notice of Application, contrasting paras. 2 and 78

server to Ms. Fellowes' office on the afternoon of Monday, January 6, 2025, where Mrs. Liu's material was left with a Stikeman Elliott records clerk.

- d. The allegations made against Ms. Fellowes concern her role as counsel and thereby engage issues of privilege not within her purview to waive or ignore.
 - e. Mrs. Liu has made serious allegations of misconduct against Ms. Fellowes relating to the October hearings in this matter but has not placed a transcript of those proceedings before the court.
 - f. Mrs. Liu seeks to tie her bid to the financial implications of the costs orders she seeks. There is no intrinsic reason why that must be so, particularly where the amount at stake is substantial, and the cost orders sought are exceptional.
6. Ms. Fellowes respectfully submits that she should be afforded a reasonable opportunity to prepare a full defence to the allegations now levelled against her once the sales process is resolved.

PART 3: LEGAL BASIS

7. Adjournments are granted on the basis of the court's assessment of the interests of justice in the circumstances presented. The analysis involves a review of the prejudice occasioned by proceeding as scheduled with the prejudice resulting from the adjournment. The paramount consideration is to preserve a fair hearing on the merits. Courts are generous, not overly strict, in granting adjournments.

Navarro v. Doig River First Nation, 2015 BCSC 2173

8. Fairness must be the hallmark of a hearing seeking to fix counsel with costs. That point was made recently by the Court of Appeal, where Justice DeWitt -Van Oosten quoted from Justice Gascon as follows:

[38] In my view, the procedural fairness mandated by Rule 14-1(35) should be approached in a manner consistent with the fairness requirements at common law, discussed in *Jodoin*. Moreover, this should be the case whether the potential for a costs award against counsel arises before, during or after the proceeding at issue:

[35] ... a court obviously cannot award costs against a lawyer personally without following a certain process and observing certain procedural safeguards... However, it is important that this process be flexible and that it

enable the courts to adapt to the circumstances of each case.

[36] Thus, a lawyer upon whom such a sanction may be imposed should be given prior notice of the allegations against [them] and the possible consequences. The notice should contain sufficient information about the alleged facts and the nature of the evidence in support of those facts. The notice should be sent far enough in advance to enable the lawyer to prepare adequately. The lawyer should, of course, have an opportunity to make separate submissions on costs and to adduce any relevant evidence in this regard. Ideally, the issue of awarding costs against the lawyer personally should be argued only after the proceeding has been resolved on its merits.

[original emphasis]

Walsh v. Muirhead, 2020 BCCA 225 at para. 38

9. Ms. Fellowes, not being a party of record, was entitled to personal service pursuant to Civil Rule 4-3(1).
10. On very little notice and without personal service, Mrs. Liu seeks an order that potentially several hundred thousand dollars of costs be visited on Ms. Fellowes personally. That is truly an extraordinary order sought, respectfully, on an unnecessarily tight schedule and a limited record.
11. Ms. Liu has not included any transcript of court proceedings in her motion materials. Rather, she relies on general statements concerning counsel's submissions at a hearing that occurred two months ago.
12. The allegations Mrs. Liu makes against Ms. Fellowes concern the latter's role as counsel and therefore engage privilege.
13. In this case, an adjournment of the cost application against Ms. Fellowes would serve the interests of justice.

PART 4: MATERIAL TO BE RELIED ON

14. The applicant will rely on:
 - a. Affidavit #1 of San Chan, made January 10, 2025;

- b. Affidavit #3 Elyssa Boongaling, made January 8, 2025; and
- c. Such additional material as counsel may advise and this Honourable Court may allow.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- a. file an application response in Form 33,
- b. file the original of every affidavit, and of every other document, that
 - i. you intend to refer to at the hearing of this application, and
 - ii. has not already been filed in the proceeding, and
- c. serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - i. a copy of the filed application response;
 - ii. a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - iii. if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: January 10, 2025

A handwritten signature in black ink, appearing to read "SAD Dawson", written over a horizontal line.

Signature of lawyer for Dennis Dawson
James Aitken LLP, counsel for Karen
Fellowes, K.C., per Scott Dawson

To be completed by the court only:

Order made

in terms requested in paragraphs _____ of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____

Judge

Signature of Judge Associate

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

SCHEDULE "A"

No. S-224444
Vancouver Registry

THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF
CANADIAN DEHUA INTERNATIONAL MINES GROUP INC., WAPITI COKING COAL
MINES CORP., AND CANADIAN BULLMOOSE MINES CO., LTD.

PETITIONERS

SERVICE LIST

<p>DLA Piper (Canada) LLP Suite 2800 – 666 Burrard Street Vancouver, BC V6C 2Z7</p> <p>Attention: Colin D. Brousson and Jeffrey D. Bradshaw (Counsel for Petitioner)</p> <p>Email: colin.brousson@dlapiper.com jeffrey.bradsaw@dlapiper.com dannis.yang@dlapiper.com</p> <p>Tel: 604 643 6400 / 604 643 2941</p>	<p>FTI Consulting Canada Inc. 1450 – 701 W. Georgia St. (P.O. Box 10089) Vancouver, BC V7Y 1B6</p> <p>Attention: Craig Munro and Hailey Liu (Counsel for Monitor)</p> <p>Email: craig.munro@fticonsulting.com hailey.liu@fticonsulting.com</p> <p>Tel: 604 757 6108 / 403 454 6040</p>
<p>Bennett Jones LLP Suite 2500 – 666 Burrard Street, Vancouver, BC V6C 2X8</p> <p>Attention: David E. Gruber and Mia Laity (Counsel for Monitor)</p> <p>Email: gruberd@bennettjones.com laitym@bennettjones.com morenoe@bennettjones.com</p> <p>Tel: 604 891 5150</p>	<p>Dentons 20th Floor – 250 Howe Street Vancouver, BC V6C 3R8</p> <p>Attention: Jordan Schultz and Eamonn Watson (Counsel for China Shougang Int.)</p> <p>Email: jordan.schultz@dentons.com eamonn.watson@dentons.com avic.arenas@dentons.com chelsea.denton@dentons.com</p> <p>Tel: 604 691 6452 / 604 629 4997</p>

<p>Harper Grey LLP Suite 200 – 650 W. Georgia Street Vancouver, BC V6B 4P7</p> <p>Attention: Erin Hatch and Roselle Wu (Counsel for Canada Zhonghe Investments Ltd.)</p> <p>Email: ehatch@harpergrey.com rwu@harpergrey.com</p> <p>Tel: 604 895 2818</p>	<p>Fasken Martineau DuMoulin LLP Suite 1500 – 1055 W Georgia St. Vancouver, BC V6E 4N7</p> <p>Attention: Kibben Jackson and Mihai Tomos (Counsel for Canadian Kailuan Dehua Mines Co., Ltd.)</p> <p>Email: kjackson@fasken.com mtomos@fasken.com</p> <p>Tel: 604 631 4786 / 403 261 7386</p>
<p>Lawson Lundell LLP Suite 1600 – 925 W Georgia Street Vancouver, BC V6C 3L2</p> <p>Attention: William L. Roberts (Counsel for Accurate Court Bailiff Services)</p> <p>Email: wroberts@lawsonlundell.com</p> <p>Tel: 604 631 9163</p>	<p>Weiheng Law 16th Floor, Tower A, China Technology Trading Building No. 66 North Fourth Ring West Road, Haidian District, Beijing</p> <p>Attention: Wei Heng (Counsel for Feicheng Mining Co., Ltd.)</p> <p>Email: weiheng@weihenglaw.com</p> <p>Tel: +86 10 6264688</p>
<p>BLG Suite 1200 – 200 Burrard St. P.O. Box 48600, Vancouver, BC, Canada V7X 1T2</p> <p>Attention: Ryan Laity and Jennifer Pepper (Counsel for Huiyong holdings (BC) Ltd.)</p> <p>Email: rlaity@blg.com jpepper@blg.com</p> <p>Tel: 604 632 3544</p>	<p>Fasken Martineau DuMoulin LLP Suite 2900 – 550 Burrard Street, Vancouver, BC V6C 0A3</p> <p>Attention: Fergus McDonnell and Johanna Fipke (Counsel for Staray Capital Limited)</p> <p>Email: fmcdonnell@fasken.com jfipke@fasken.com</p> <p>Tel: 604 631 3220</p>
<p>McMillan LLP Suite 1500 – 1055 W. Georgia Street, PO Box 11117 Vancouver, BC, V6E 4N7</p> <p>Attention: Daniel Shouldice (Counsel for HD Mining International Ltd.)</p> <p>Email: Daniel.Shouldice@mcmillan.ca</p> <p>Tel: 604 691 6858</p>	<p>Fraser Litigation Group Suite 1100 – 570 Granville Street, Vancouver, BC V6C 3P1</p> <p>Attention: R. Barry Fraser (Counsel for Qu Bo Liu)</p> <p>Email: bfraser@fraserlitigation.com hliu@fraserlitigation.com</p> <p>Tel: 604 343 3101</p>

<p>Department of Justice Canada British Columbia Regional Office 900 – 840 Howe Street Vancouver, BC V6Z 2S9</p> <p>Attention: Aminollah Sabzevari and Julio Paoletti (Counsel for His Majesty the King in right of Canada)</p> <p>Email: aminollah.sabzevari@justice.gc.ca julio.paoletti@justice.gc.ca khanh.gonzalez@justice.gc.ca</p> <p>Tel: 587 930 5282</p>	<p>THC Lawyers Suite 2130, P.O. Box 321 Toronto, ON M5K 1K7</p> <p>Attention: Ran He (Counsel for Feicheng Mining Group Co., Ltd.)</p> <p>Email: rhe@thclawyers.ca</p> <p>Tel: 647 792 7798</p>
<p>Bullmoose Mining Ltd. 3577 West 34th Avenue Vancouver, BC V6N 2K7</p>	<p>Canada Revenue Agency C/O N. Sindu (462-11) 9755 King George Blvd. Surrey, BC, V3T 5E6</p>
<p>CIBC-CEBA 400 Burrard Street Vancouver, BC V6C 3M5</p>	<p>Canadian Dehua Living International Mines Corp. 310 – 1155 Pender Street West Vancouver, BC V6E 2P4</p>