



No. S-226670
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

– AND –

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, C. 57, AS AMENDED AND THE *BUSINESS CORPORATIONS ACT*, S.N.B.
1981, C. B-9.1, AS AMENDED

– AND –

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
TREVALI MINING CORPORATION AND TREVALI MINING (NEW BRUNSWICK) LTD.

PETITIONERS

NOTICE OF APPLICATION

Name of applicant: The Bank of Nova Scotia, in its capacity as the RCF Administrative Agent.

To: The Service List, a copy of which is attached hereto as Schedule "A".

TAKE NOTICE that an application will be made by the RCF Administrative Agent to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, B.C., on Tuesday, October 11, 2022 at 2:45 p.m. for the orders set out in Part 1, below.

PART 1: ORDERS SOUGHT

1. The RCF Administrative Agent seeks an order in substantially the form of draft order attached hereto as Schedule "B" (the "**Sealing Order**") that the Confidential Supplemental Report to the Fourth Report of the Monitor dated October 11, 2022 (the "**Confidential Supplement**") be filed under seal.

PART 2: FACTUAL BASIS

A. Overview

1. All capitalized terms used but not otherwise defined herein have the meanings given to them in the Affidavit #1 of Brenden Creaney, affirmed August 19, 2022.
2. The RCF Administrative Agent seeks an order that the Confidential Supplement be filed under seal. The Confidential Supplement comments on, and appends an unredacted copy of, the Settlement Agreement (defined below), which, in turn, includes figures which might be relied upon by a potential bidder in the sales and investment solicitation process (“SISP”) as indicative of the secured creditors’ views as to the potential value of the Rosh Pinah mine. Accordingly, the Sealing Order is required to maintain the integrity of the SISP, and is the proportionate remedy to achieve this purpose.

B. Background

3. On August 19, 2022, this Court granted an initial order (the “**Initial Order**”) in these proceedings pursuant to the CCAA. The Initial Order provided, among other things: (a) that FTI Consulting Canada Inc. was appointed monitor of the Petitioners (in such capacity, the “**Monitor**”); and (b) for a stay of proceedings in favour of the Petitioners (the “**Stay of Proceedings**” until August 29, 2022.
4. On August 29, 2022, this Court granted an amended and restated initial order (the “**ARIO**”), which, among other things, provided that the Stay of Proceedings be extended to October 6, 2022 (the “**Stay Period**”).
5. On September 14, 2022, this Court granted, among others, an order (the “**SISP Order**”) approving a sales and investment solicitation process for the Petitioners’ interests in the Rosh Pinah Mine and Caribou Mine.
6. On September 29, 2022, the Petitioners filed a Notice of Application returnable October 11, 2022 (the “**Non-Applicant Stay Application**”) seeking an order that, during the Stay Period, any Person having a claim against any member of the Trevali Group be stayed from setting off those claims against amounts payable by such Person to Rosh Pinah Zinc

Corporation (Proprietary) Limited (“**RPZC**”). This application arose given that, in the context of these proceedings, Glencore declined to advise whether it would or would not seek to set off amounts payable by it to RPZC against obligations owed to it by other members of the Trevali Group in relation to the Caribou and Perkoa mines (such set-off is hereinafter referred to as “**Multilateral Setoff**”).¹

7. On October 3, 2022, the Petitioners filed an application (the “**Stay Extension Application**”) seeking an extension of the Stay Period to October 18, 2022 (the “**Stay Extension**”).
8. On October 6, 2022, at the hearing of the Stay Extension Application, among other things:
 - (a) this Court granted the Stay Extension;
 - (b) counsel for the Petitioners, the RCF Administrative Agent and Glencore advised this Court that the parties anticipated resolving the issues under the Non-Applicant Stay Application, and were negotiating a formal settlement agreement (the “**Settlement Agreement**”) to be presented to this Court for its approval at the hearing of the Petitioners’ pending application for interim financing scheduled for October 11, 2022; and
 - (c) this Court agreed to hold October 17, 2022 open to, if necessary, hear the Non-Applicant Stay Application, and the parties agreed to adjourn that application to that future date.
9. On about October 11, 2022, the Trevali Group, Glencore, and the RCF Administrative Agent, as agent for and on behalf of the RCF Lenders, finalized the Settlement Agreement. The Settlement Agreement is attached as Appendix A to the Confidential Supplement.

C. The Confidential Supplement

10. The Confidential Supplement includes a complete and unredacted copy of the Settlement Agreement along with the Monitor’s comments in respect thereof.

¹ Affidavit #5 of Brendan Creaney, affirmed September 29, 2022, paras. 3, 16.

11. The Settlement Agreement is conditional upon this Court approving the Settlement Agreement and the Interim Financing Term Sheet (defined in the Fourth Report) and authorizing Trevali Corp. to enter into both.
12. In general terms, the Settlement Agreement provides, among other things that:
 - (a) Glencore will, subject to certain exceptions set out therein, waive any right or claim to Multilateral Setoff during the pendency of these proceedings; and
 - (b) Trevali Corp., or such other party on its behalf, shall pay the Net Proceeds (as defined in the Settlement Agreement; i.e. the net amount available for distribution to the RCF Lenders and Glencore under their security after repayment of any interim financing obligations) to the RCF Administrative Agent and Glencore according to certain terms and in specific amounts according to a defined schedule (the “**Distribution Schedule**”).

PART 3: LEGAL BASIS

1. The RCF Administrative Agent relies on the CCAA, the *Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court.
2. This Court has the authority to order that certain materials filed with the court be sealed in the court file. In *Sherman Estate v. Donovan*, 2021 SCC 25 (“*Sherman Estate*”), the Supreme Court of Canada “recast” the long-standing test set forth in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, to help clarify its “core prerequisites” “without altering its essence”. As clarified, the Court held that the presumptive openness of court proceedings may be appropriately limited by the grant of a sealing order where the applicant establishes that:
 - (a) court openness (i.e. not sealing the documents in question) poses a serious risk to an important public interest;
 - (b) the sealing order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent this risk; and

- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.²
3. *Sherman Estates* has since been followed by Canadian insolvency courts, including in cases where sealing orders were granted to keep confidential commercially sensitive information the disclosure of which would undermine the integrity of a sales process.³
 4. The need to keep the Confidential Supplement confidential fits squarely within the test described in *Sherman Estate*. There is a public interest in ensuring the integrity of the SISP. Disclosure of the Settlement Agreement would pose a serious risk to this interest as potential purchasers may seek to derive from the Distribution Schedule what the Petitioners' two most senior lenders think the market value of the assets subject to the SISP may be. The Sealing Order is necessary to prevent this risk in the absence of reasonable alternative measures. Accordingly, the benefits of the Sealing Order outweigh its negative effects, including any limitation to the presumptive openness of these CCAA proceedings.
 5. For the foregoing reasons, the RCF Administrative Agent submits that the Sealing Order is appropriate and should be granted. The RCF Administrative Agent has complied with the procedure for obtaining a sealing order set out in the Supreme Court of British Columbia Practice Direction 58, "Sealing Orders in Civil and Family Proceedings" (effective February 10, 2020).

PART 4: MATERIAL TO BE RELIED ON

1. Fourth Report of the Monitor, dated October 11, 2022;
2. Confidential Supplemental Report to the Fourth Report of the Monitor, dated October 11, 2022;
3. Affidavit #5 of Brendan Creaney, affirmed September 29, 2022; and

² *Sherman Estate v. Donovan*, 2021 SCC 25 ("*Sherman Estate*"), paras. 37-38, and 43.

³ *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347, paras. 23-24, 26-27; see also: *Just Energy Group Inc. et al.*, 2021 ONSC 7630.

4. such further and other materials as counsel may advise and this Honourable Court may allow.

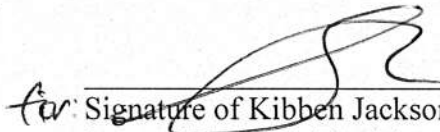
The Applicant estimate that the application will take **5 minutes**.

This matter is not within the jurisdiction of a master. The Honourable Madam Justice Fitzpatrick is seized of this matter.

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).

Dated: 11-Oct-2022


 Signature of Kibben Jackson
 Lawyer for RCF Administrative Agent

<i>To be completed by the court only:</i>	
Order made	
<input type="checkbox"/> in the terms requested in paragraphs of Part 1 of this Notice of Application	
<input type="checkbox"/> with the following variations and additional terms:	
.....	
Date:	
.....	
	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

The Solicitors for the Applicant are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Kibben Jackson/286051.00072)

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- 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
- OTHER

SCHEDULE "A"

Service List

IN THE SUPREME COURT OF BRITISH COLUMBIA

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MINING CORPORATION AND TREVALI MINING (NEW BRUNSWICK) LTD.

PETITIONERS

SERVICE LIST

As at October 5, 2022

Monitor's Website: <http://cfcanada.fticonsulting.com/trevali/>

Name of Counsel:	Name of Parties:
Blake, Cassels & Graydon LLP Suite 2600, 595 Burrard Street Vancouver, BC V7X 1L3 Tel. No. 604-631-4218 Attention: Peter Rubin Peter Bychawski Claire Hildebrand Alison Burns Email: peter.rubin@blakes.com ; peter.bychawski@blakes.com ; claire.hildebrand@blakes.com ; alison.burns@blakes.com	<i>Counsel for Petitioners Trevalli Mining Corporation and Trevalli Mining (New Brunswick) Ltd.</i>

Name of Counsel:	Name of Parties:
<p>FTI Consulting Canada Inc. Suite 1450, 701 West Georgia Street Vancouver, BC V7Y 1B6</p> <p>Tel. No. 604.551.9881</p> <p>Attention: Tom Powell Craig Munro Mike Clark Huw Parks</p> <p>E-mail: tom.powell@fticonsulting.com; craig.munro@fticonsulting.com; mike.clark@fticonsulting.com; huw.parks@fticonsulting.com</p>	<p><i>Court Appointed Monitor</i></p>
<p>Dentons Canada LLP 20th Floor, 250 Howe Street Vancouver, BC V6C 3R8</p> <p>Tel. No. 604-687-4460</p> <p>Attention: John R. Sandrelli Jordan Schultz Valerie Cross Eamonn Watson</p> <p>E-mail: john.sandrelli@dentons.com jordan.schultz@dentons.com valerie.cross@dentons.com eamonn.watson@dentons.com avic.arenas@dentons.com ramez.ali@dentons.com</p>	<p><i>Counsel to the Monitor, FTI Consulting Canada Inc.</i></p>
<p>Fasken Martineau DuMoulin LLP Suite 2900, 550 Burrard Street Vancouver, BC V6C 0A3</p> <p>Tel. No. (604) 631-4786</p> <p>Attention: Stuart Brotman Kibben Jackson</p> <p>Email: sbrotman@fasken.com kjackson@fasken.com</p>	<p><i>Counsel for The Bank of Nova Scotia, as Administrative Agent</i></p>
<p>McCarthy Tétrault LLP Suite 2400 745 Thurlow Street Vancouver, BC V6E 0C5</p> <p>Tel. No. 604-643-7154</p> <p>Attention: Lance Williams Forrest Finn</p> <p>Email: lwilliams@mccarthy.ca ffinn@mccarthy.ca sdanielisz@mccarthy.ca</p>	<p><i>Counsel to Glencore International AG, Glencore AG and Glencore Canada Corporation</i></p>

Name of Counsel:	Name of Parties:
<p>KND Complex Litigation 1186 Eglinton Ave West Toronto, Ontario M6C 2E3</p> <p>Tel. No. 416-507-6592</p> <p>Attention: Eli Karp Sage Nematollahi Taek Soo Shin</p> <p>Email: ek@knd.law sn@knd.law ts@knd.lawa</p>	<p><i>Counsel to an ad hoc committee of Trevali Mining Corporation shareholders</i></p>
<p>Koskie Glavin Gordon Suite 1650-409 Granville Street Vancouver, BC V6C 1T2</p> <p>Tel. No. 604-734.8001</p> <p>Attention: Dawid Cieloszczyk</p> <p>Email: DCieloszczyk@koskieglavin.com</p>	<p><i>Counsel for United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-306 (Caribou Mine)</i></p>
<p>Osler 1055 West Hastings Street Suite 1700, The Guinness Tower Vancouver, BC V6E 2E9</p> <p>Tel. No. 236-466-2816</p> <p>Attention: Mary I.A. Buttery, Q.C. Amanda Manasterski</p> <p>Email: mbuttery@osler.com amanasterski@osler.com</p>	<p><i>Counsel for the Directors of Trevali Mining Corporation</i></p>
<p>British Columbia Regional Office Department of Justice Canada 900 – 840 Howe Street Vancouver, British Columbia V6Z 2S9</p> <p>Tel. No. 604-666-2061</p> <p>Attention: Jason Levine</p> <p>Email: jason.levine@justice.gc.ca</p>	<p><i>His Majesty the King in Right of Canada</i></p>

Name of Counsel:	Name of Parties:
<p>Office of the Attorney General Chancery Place 2078 - 675 King Street P.O. Box 6000 Fredericton, NB E3B 5H1</p> <p>Tel. No. (506) 462-5100</p> <p>Attention: Christopher Whibbs Jennifer Welles James Mockler</p> <p>Email: Christopher.Whibbs@gnb.ca Jennifer.Welles@gnb.ca James.Mockler@gnb.ca</p>	<p><i>His Majesty the King in Right of the Province of New Brunswick, as represented by the Department of Natural Resources and Energy Development</i></p>
<p>Lawson Lundell LLP 1600 - 925 West Georgia Street, Vancouver, BC V6C 3L2</p> <p>Tel. No. 604-631-9163</p> <p>Attention: William L. Roberts</p> <p>Email: wroberts@lawsonlundell.com</p>	<p><i>Counsel for Graymont Limited and Graymont (NB) Inc.</i></p>
<p>New Brunswick Power Corporation 515 King Street P.O. Box 2010 Fredericton, NB E3B 5G4</p> <p>Tel. No. 506-458-393</p> <p>Attention: Jamie Petrie Leanne Murray</p> <p>Emails: JPetrie@nbpower.com LMurray@nbpower.com</p>	<p><i>Counsel for NB Power Corporation</i></p>
<p>BLG 1200 Waterfront Centre, 200 Burrard Street, P.O. Box 48600, Vancouver, BC, V7X 1T2</p> <p>Tel. 604-632-3425</p> <p>Attention: Lisa Heibert</p> <p>Email: lheibert@blg.com</p>	<p><i>Counsel for Redpath Mining</i></p>

Name of Counsel:	Name of Parties:
McInnes Cooper Barker House, Suite 600 570 Queen Street PO Box 610 Fredericton, NB, E3B 5A6 Tel: (506) 458 1655 Attention: Tony Richardson Email: tony.richardson@mcinnescooper.com	<p style="text-align: center;"><i>Counsel for Redpath Mining</i></p>

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SCHEDULE "B"

Draft Sealing Order

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

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IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
TREVALI MINING CORPORATION AND TREVALI MINING (NEW BRUNSWICK) LTD.

PETITIONERS

SEALING ORDER

BEFORE) THE HONOURABLE) October 11, 2022
) MADAM JUSTICE FITZPATRICK)

ON THE APPLICATION of The Bank of Nova Scotia, in its capacity as administrative agent for the revolving credit facility lenders (in such capacity, the “**RCF Administrative Agent**”), coming on for hearing at Vancouver, British Columbia on October 11, 2022, and on hearing Kibben Jackson and Glen Nesbitt, counsel for the RCF Administrative Agent, and those counsel listed in Schedule “A” attached hereto; AND UPON READING the material filed, including the Fourth Report of the Monitor dated October 11, 202, and the Confidential Supplemental Report to the Fourth Report of the Monitor dated October 11, 2022; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, the British Columbia Supreme Court Civil Rules, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS that:

1. Access to Sealed Items permitted by:

[**X**] Counsel for the Petitioners
and counsel for the Monitor

Items to be sealed

Document Name	Date filed <i>(Date on Court Stamp)</i>	Number of copies filed, including any extra copies for the judge	Duration of sealing order: <i>(to specific date or until further order)</i>	Sought:	Granted	
					Yes	No
<u>(2) Specific Document</u> Confidential Supplemental Report to the Fourth Report of the Monitor dated October 11, 2022	October 11, 2022	One copy, to be sealed.	Until further Order of this Court	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>(3) Clerk's Notes</u>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>(4) Order</u>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. The time for service of the Notice of Application for this order be and is hereby abridged such that the application for this Sealing Order is properly returnable on this date and service upon any interested party other than those parties on the Service List maintained by the Monitor in these proceedings is hereby dispensed with.

3. Endorsement of this Order by counsel appearing on this application, other than counsel for the RCF Administrative Agent, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Kibben Jackson
Lawyer for RCF Administrative Agent

BY THE COURT

REGISTRAR

SCHEDULE "A"

Counsel Appearing

Counsel	Party Represented

No. S-226670
Vancouver Registry

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PETITIONERS

**ORDER MADE AFTER APPLICATION
(SEALING ORDER)**

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Counsel: Kibben Jackson
Matter No: 286051.00072