



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

**APPLICATION RESPONSE**

Application response of: the Attorney General of Canada on behalf of His Majesty the King in right of Canada, ( the "AGC").

THIS IS A RESPONSE TO the notice of application of FTI Consulting Canada Inc., in its capacity as court-appointed monitor of Trevali Mining Corporation and Trevali Mining (New Brunswick Ltd. (in that capacity, the "Monitor"), FTI Consulting Canada Inc., in its capacity as court-appointed receiver of certain assets of Trevali Mining (New Brunswick) Ltd. (in that capacity, the "Receiver", and collectively with the Monitor, the "Applicants"), filed September 17, 2024.

The AGC estimates that the application will take a full day.

**Part 1: ORDERS CONSENTED TO**

The AGC consents to the order in Paragraph 1 if Glencore Canada Corporation ("Glencore") is required by the order to pay the Harmonized Sales Tax ("HST") payable as a recipient of a taxable supply to FTI Consulting Canada Inc. ("FTI") in its capacity as Receiver for Trevali Mining New Brunswick) Ltd. ("TNB").

**Part 2: ORDERS OPPOSED**

The AGC opposes the order in Paragraph 1, if Glencore is required by the order to pay the HST to FTI in its capacity as Monitor for Trevali Mining Corporation ("TMC").

**Part 3: ORDERS ON WHICH NO POSITION IS TAKEN**

The AGC takes no position on the payment of interest and penalties requested in Paragraph 1.

**Part 4: FACTUAL BASIS**

1. The HST in this matter originated from Glencore receiving a taxable supply from TNB.
2. Glencore did not pay the HST to TNB and TNB did not collect the HST from Glencore.
3. TNB was audited and assessed by Canada Revenue Agency ("CRA") with respect to HST collectible by TNB from Glencore that TNB failed to collect and report.
4. The Applicants in this matter now seek to order Glencore to pay the HST.
5. Glencore argues it cannot remit the HST and that it may rely on set-off to avoid paying the HST.

**Part 5: LEGAL BASIS**

1. Pursuant to subsections 165(1) and (2) of the *Excise Tax Act*, RSC 1985 c. E-15, as amended, ("*ETA*"), HST is payable by Glencore as the recipient of a taxable supply. Glencore is under a statutory duty to pay the HST.
2. Pursuant to section 221 of the *ETA*, TNB as the person who makes a taxable supply, shall collect, as agent for the Crown, the HST payable by Glencore.
3. TNB was audited and assessed by CRA as the person making the taxable supply to Glencore. The assessment is deemed to be valid and binding pursuant to subsection 299(3) of the *ETA*.
4. CRA filed proofs of claim against TNB in the CCAA proceedings and in the receivership. If the HST is required to be paid via this order to the Receiver for TNB, this will result in a substantial payout and reduction of CRA's claim against TNB.
5. The concept of contractual or equitable set-off is inapplicable and inappropriate with regard to Glencore's statutory duty to pay HST. The HST is a statutory tax liability owed to the Crown, not TNB.
6. *Airport Auto Limited v The Queen*, 2003 TCC 683.
7. *Crown Liability and Proceedings (Provincial Court) Regulations* (SOR/91-604), s 10.

**Part 6: MATERIAL TO BE RELIED ON**

1. The pleadings filed in this proceeding;
2. The affidavits filed in this proceeding; and
3. Such materials as counsel may advise and this Honourable Court may permit.

The AGC has not filed in this proceeding a document that contains the AGC's address for service.

The AGC's address for service in this proceeding is:

Department of Justice Canada  
British Columbia Regional Office  
900 – 840 Howe Street  
Vancouver, BC V6Z 2S9

Attention: Aminollah Sabzevari

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Dated: October 11, 2024



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