

JUN 25 2024

FORCE FILED  
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No. S-238572  
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 PLAN OF COMPROMISE AND ARRANGEMENT OF  
MYRA FALLS MINE LTD.

PETITIONER

NOTICE OF APPLICATION

**Name of applicant:** Amalgamated Mining & Tunnelling Inc. (“AMTI” or the “Applicant”)

**To:** THE SERVICE LIST

TAKE NOTICE that an application will be made by the Applicant to Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, British Columbia on Friday, June 28, 2024 at 2:00 p.m. for the order set out in Part 1 below.

The Applicant estimates that the application will take 10 minutes.

This matter is before Justice Fitzpatrick.

**Part 1: ORDER SOUGHT**

1. An Order substantially in the form attached as Schedule “A” hereto (the “**Sealing Order**”), providing for the following relief:

- (a) confirming that the time for service of this Notice of Application and supporting materials is abridged such that the Notice of Application is properly returnable on June 28, 2024 and service thereof is dispensed with; and
- (b) sealing the Confidential Exhibits 15 and 16 (the “**Confidential Exhibits**”) to Affidavit No. 1 of Donald MacLellan made on June 24, 2024 (the “**MacLellan Affidavit**”) pending further order of this Court.



**Part 2: FACTUAL BASIS**

1. Capitalized terms used herein have the same meanings as in the MacLellan Affidavit unless otherwise defined.
2. The MacLellan Affidavit includes the Confidential Exhibits which contain true copies of:
  - (a) a credit bid from AMTI to Myra Falls Mine Ltd. (“MFM”) for the Leased Equipment dated May 28, 2024; and
  - (b) an independent third party appraisal of the Leased Equipment obtained by AMTI dated June 19, 2024 along with the engagement letter, appraiser's qualifications and copies of the information reviewed by the appraiser in preparing the appraisal.
3. The Confidential Exhibits contain confidential and commercially sensitive information regarding the value of the Leased Equipment, and as such, AMTI is seeking a sealing order with respect to only those Confidential Exhibits. Disclosure of the information contained in the Confidential Exhibits could cause significant harm or prejudice to AMTI as a creditor in these CCAA proceedings and further prejudice any marketing or sale of the Leases or of the Leased Equipment.

MacLellan Affidavit at para 33.

4. MFM has stated that it is developing a further sales process with the Monitor to market and sell an inventory of equipment that is not required by MFM while the mine is under care and maintenance. MFM and the Monitor have not otherwise provided any details or information on the contemplated sales process for this equipment and whether it will include the Leases or the Leased Equipment.

Notice of Application filed June 17, 2024 at paras 9(k), 9(l);  
Affidavit No. 4 of Hein Frey made on June 17, 2024 at paras 4(k), 4(l).

**Part 3: LEGAL BASIS**

1. AMTI relies on:
  - (a) the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

- (b) the *Supreme Court Civil Rules*;
- (c) the inherent and equitable jurisdiction of this Honourable Court; and
- (d) such further and other legal bases and authorities as counsel may advise and this Honourable Court may permit.

2. AMTI bears the burden of establishing as a threshold requirement that openness presents a serious risk to a competing interest of public importance. This is a high bar to clear. Even where it is met, an applicant must still show that the order is necessary to prevent the risk and that, as a matter of proportionality, the benefits of that order restricting openness outweigh its negative effects.

*Sherman Estate v. Donovan*, [2021 SCC 25](#) at paras. [1-3](#).

3. A serious risk relating to the disclosure of the information in the Confidential Exhibits has been established in the circumstances. The information sought to be sealed contains confidential and commercially sensitive financial information related to the Leased Equipment which, if released, could harm AMTI's position as a creditor in these proceedings or the sale of the Leases or the Leased Equipment in these CCAA proceedings, as MFM and the Monitor have stated they are contemplating.

4. The proposed Sealing Order reflects a proportional approach recognizing that the deleterious effects are minimal and outweighed by the benefits of sealing the Confidential Exhibits. AMTI is not seeking to seal the entire MacLellan Affidavit, rather only those exhibits which contain confidential and commercially sensitive information on the Leased Equipment.

5. The procedure to be followed in British Columbia for seeking a sealing order is set out in the Supreme Court of British Columbia PD-58, *Sealing Orders in Civil and Family Proceedings* (effective February 10, 2020), which AMTI, to the extent applicable, intends to comply with.

#### **Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit No. 1 of Donald MacLellan, made June 24, 2024; and

2. Such further and other materials 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).

Dated: June 25, 2024

  
For: Signature of Kelsey Meyer  
 Applicant  Lawyer for applicant

THIS NOTICE OF APPLICATION is prepared and delivered by Kelsey Meyer of the firm Bennett Jones LLP, Barristers & Solicitors, File No. 097241.1, whose place of business and address for delivery is 4500 Bankers Hall East, 855 2nd Avenue SW, Calgary, Alberta T2P 4K7. Telephone: (403) 298-3323. Facsimile: (403) 265-7219. [meyerk@bennettjones.com]

***To be completed by the court only:***

Order made

- in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this notice of application
- with the following variations and additional terms:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of  Judge  Associate Judge

**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

Schedule "A"

No. S-238572  
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PETITIONER

**SEALING ORDER**

BEFORE THE HONOURABLE )  
JUSTICE FITZPATRICK ) JUNE 28, 2024

ON THE APPLICATION of Amalgamated Mining & Tunnelling Inc. (the "**Applicant**") coming on for hearing at 800 Smithe Street, Vancouver, British Columbia, on the 28th day of June, 2024; AND ON HEARING Kelsey Meyer, counsel for the Applicant, and those other counsel listed on Schedule "A" hereto; AND UPON READING the materials filed, including the Affidavit No. 1 of Donald MacLellan made June 24, 2024; AND UPON BEING ADVISED that the parties on the Service List were given notice; AND PURSUANT TO the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended ("**CCAA**"), the *Supreme Court Civil Rules*, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

**THIS COURT ORDERS THAT:**

1. The time for service of the Notice of Application dated June 25, 2024 and supporting materials is hereby abridged such that the Notice of Application is properly returnable today and service thereof is hereby dispensed with.
2. The following documents are to be sealed by the Registrar of this Honourable Court for the duration noted:

Description	Date filed, if applicable	Number of copies filed, including any extra copies for the judge	Duration of sealing order	Sought	Granted	
					YES	NO
1a) Specific Documents <b>Confidential Exhibits 15 and 16 to Affidavit No. 1 of Donald MacLellan made June 24, 2024</b>	<b>To be filed.</b>	<b>1 original to be sealed.</b>	<b>Until further order of this Honourable Court.</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1b) Entire court file				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2) Other court records stored by the court				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3) Orders				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4) Reasons for Judgment				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Access to the sealed items is restricted to the following persons:

- a.  Parties
- b.  Counsel for a party
- c.  Others:
  - i. counsel for Myra Falls Mine Ltd.; and
  - ii. counsel for FTI Consulting Canada Inc., in its capacity as Monitor in these CCAA proceedings.

4. Endorsement of this Order by counsel appearing on this application, other than counsel for the Applicant, 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:

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Signature of Kelsey Meyer  
Counsel for the Applicant, Amalgamated Mining  
& Tunnelling Inc.

BY THE COURT

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REGISTRAR

**Schedule "A"**

**List of Counsel**

Counsel	Party
Kelsey Meyer and Andrew Froh	The Applicant, Amalgamated Mining & Tunnelling Inc.

Schedule "A"

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**SEALING ORDER**

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**BENNETT JONES LLP**

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+1 604 891 7500

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