

SUPREME COURT OF YUKON

Citation: *Sumitomo Canada Limited v Minto Metals Corp.*,
2025 YKSC 6

Date: 20250121
S.C. No. 23-A0086
Registry: Whitehorse

BETWEEN:

SUMITOMO CANADA LIMITED

PETITIONER

AND

MINTO METALS CORP.

RESPONDENT

Before Chief Justice S.M. Duncan

Counsel for the Petitioner Kibben Jackson (by videoconference)

Counsel for PricewaterhouseCoopers Inc. Bryan C. Gibbons (In person)

Counsel for Selkirk First Nation Greg Fekete (In person)

Counsel for Government of Yukon Dorothy J. Miller (by videoconference)
and Julie DesBrisay (In person)

Counsel for Maynbridge Capital Inc. Mary Buttery, KC (by videoconference)

Counsel for Capstone Mining Corp. Claire Hildebrand (by videoconference)

Counsel for Dyno Nobel Canada Inc,
Thyssen Mining Construction of Canada Ltd.
and BQE Water Inc. Charles Bois

Counsel for Fountain Tire Mine Service Ltd.;
Mueller Electric (Div II) Ltd.; Borealis Fuels &
Logistics Ltd.; Guillevin International Co.;
Suncor Energy Services Inc.; and Major
Drilling Group International Inc. James R. Tucker (In person)

Counsel for Finning (Canada) a division of
Finning International Inc. Eamonn Watson (by videoconference)

Counsel for Yukon Energy Corporation

Jeffrey Bradshaw (by videoconference)

Counsel for JDS Energy & Mining Inc.

David Volk

REASONS FOR DECISION

Introduction

[1] On September 5, 2024, this Court granted several orders on application by PriceWaterhouseCoopers Inc., LIT, the Receiver of Minto Metals Corp. (“Minto Metals”). The orders approved an asset purchase agreement to sell certain building infrastructure and equipment of the Minto Mine to 843093 Yukon Inc. (“843”), a company owned by Selkirk First Nation; approved an exclusivity agreement between the Receiver and 843 for the right to negotiate the purchase of mineral claims, licences and permits; approved the Receiver’s activities since their last report to the Court; authorized an increase in the amount of the Receiver’s Charge and Borrowing Charge from \$1.0 million to \$2.7 million; and sealed the confidential supplemental fifth report.

[2] The following are my reasons for issuing those orders.

Background

[3] This Court’s decision of June 14, 2024¹ describes the background to this receivership and the activities of the Receiver to the date of the hearing of the previous application, May 13, 2024. To summarize, Minto Metals owned and operated a copper-gold-silver mine near Pelly Crossing, Yukon, 250 kilometres northwest of Whitehorse,

¹ *Sumitomo Canada Limited v Minto Metals Corp.*, 2024 YKSC 28 (the “June 14, 2024 decision”).

on Selkirk First Nation Category A² settlement land. Minto Metals abandoned the mine on May 13, 2023, and was successfully petitioned into a limited receivership on June 29, 2023, by Sumitomo Canada Limited, the exclusive purchaser of the concentrate and a secured lender with a first ranking security interest in the concentrate. On July 24, 2023, PriceWaterhouseCoopers Inc., LIT was appointed by the Court as the Receiver over all the assets, undertaking, and property of Minto Metals. The Yukon government performed initial care and maintenance activities to protect the environment and human health and safety and then began reclamation and closure work, using the \$75 million reclamation bond, previously posted by Minto Metals. The Yukon government expects there to be a \$19 million shortfall until the completion of the closure.

[4] The Receiver conducted a Sales and Investment Solicitation Process (“SISP”) to market and sell the Minto mine property *en bloc*, or as a whole, between August 2023 and May 2024. The SISP was unsuccessful, and the Receiver was authorized to proceed with the Liquidation Plan it had prepared, despite some affected parties requesting the re-opening of the SISP, as described in the June 14, 2024 decision. A sealing order was placed on the final two pages of the confidential supplementary fourth report, because it contained sensitive financial information related to the Liquidation.

² Council of Yukon First Nations website, Umbrella Final Agreement Tab, Understanding of the Umbrella Final Agreement, Chapter 5, p. 11:

“(a) Category A Settlement Land

On Category A Settlement Land, a Yukon First Nation has complete ownership of the surface and subsurface. In other words, Yukon First Nations have rights equivalent to fee simple to the surface of the lands and full fee simple title to the sub-surface.

This means that Yukon First Nations have the right to use the surface of the land and the right to use what is below the surface, such as minerals and oil and gas.”

Receiver's Recent Activities

[5] Since the Receiver's fourth report, the Receiver has carried out the following activities:

- commenced implementation of the Liquidation Plan;
- engaged Maynards Industries Canada II Ltd. ("Maynards") as auctioneer for the sale of the Minto Metals assets;
- coordinated site access for Maynards to begin preparing equipment and inventory at site as part of the Liquidation Plan;
- held discussions with Selkirk Development Corporation ("SDC") on the status of barge repairs and inspection details;
- held discussions with Transport Canada regarding the barge inspection;
- held discussions with Maynards on verbal and written offers received for offers on the Minto Metals assets;
- determined with the Yukon government and SDC the process for review of barge requests to remove items from Minto site;
- coordinated with the Yukon government to complete the Land Treatment Facility Annual Report;
- issued an email communication on July 24, 2024 to provide creditors with an update on the Receiver's activities;
- reviewed the Selkirk First Nation bid and held extensive discussions and negotiations with Selkirk First Nation (in conjunction with Maynards) to clarify details of their bid and develop an initial asset purchase agreement;

- held several separate discussions with the Yukon government, Yukon Water Board, Capstone Mining Corp. (“Capstone”), and Zurich in regard to the Selkirk First Nation bid;
- negotiated a revised asset purchase agreement and Selkirk First Nation Exclusivity Agreement due to two-part transaction structure;
- reviewed updated list of assets provided by the Yukon government for use to complete reclamation activities;
- provided regular updates to Maynbridge on the status of the Liquidation Plan;
- negotiated the Equipment Lease between the Receiver and the Yukon government, that the Receiver intends to assign to 843 upon approval of the Selkirk First Nation bid by the Yukon Court (later revised to exclude Receiver as set out below);
- extended the commercial general liability insurance that was set to expire on August 11, 2024, until November 30, 2024;
- issued email communication on August 20, 2024, to provide lienholders with an update on the Receiver’s activities;
- discussed the renewal of the property insurance, which is set to expire on September 22, 2024, with the insurance provider; and
- prepared the fifth report and the confidential supplement to the fifth report for the Yukon Court.

New Bids

[6] The following describes the background and details of the several new bids to purchase the mine assets, including the Selkirk First Nation bid, that emerged after the Receiver's fourth report.

[7] The mine site location requires a crossing of the Yukon River by barge in the summer and by ice road in the winter. Removal of mine assets to be auctioned in Whitehorse over the summer of 2024 was dependent upon the operation of the barge. At the time of the receivership, the barge was in need of inspection by Transport Canada and could not operate until the inspection and necessary repairs were completed.

[8] During the last part of May 2024, after the Court authorization of the Liquidation Plan and its implementation, the Receiver entered into an agreement with Maynards to assist with the Liquidation Plan implementation. At a meeting between the Receiver and Maynards on May 15, 2024, they discussed marketing the assets, the status and timing of the barge repairs, and the timeline for removal of the assets from the mine site to Whitehorse where the auction would be held. The Receiver provided Maynards with a list of parties who had previously expressed interest in purchasing the assets during the unsuccessful SISF. The Receiver also advised that they would direct to Maynards any parties who expressed interest in the Minto Metals assets after May 13, 2024.

[9] While the barge remained non-operational, Maynards received expressions of interest in the mine's assets from three prospective purchasers. After in-depth discussions among Maynards, the Receiver, and each of the prospective purchasers,

the Receiver concluded that two of the three proposals were inadequate and should not be pursued.

[10] The proposal from JDS Energy & Mining Inc. (“JDS”) included a cash payment that was less than the Receiver’s estimated Forced Liquidation Value (“FLV”). This preliminary proposal did not materialize into an offer. The second proposal was too uncertain to be pursued because of no evidence of funding source or certainty, resulting in questions about the party’s ability to complete the transaction; a failure to discuss the issues raised in the Receiver’s fourth report (regulatory permitting reporting obligations, timing of exploration and drilling and its relationship to ongoing reclamation and closure, ongoing access to the reclamation bond, posting future reclamation security) with the key stakeholders – Selkirk First Nation and Yukon government; and significant outstanding due diligence. The Receiver decided to pursue seriously the offer from Selkirk First Nation to buy substantially all of Minto Metals’ assets. The Receiver and Selkirk First Nation worked together from mid-May 2024 to mid-August 2024 on the details of the bid.

[11] There was one additional late bid that was incomplete and not pursued.

Selkirk First Nation Bid

[12] Selkirk First Nation submitted its bid to Maynards on June 10, 2024. It included the following terms:

- Selkirk First Nation to incorporate a Yukon corporation, identified as 843, that they would own indirectly and control;
- 843 to purchase all of the Building Infrastructure and much of the Rolling Equipment at the mine as is where is;

- 843 to provide a refundable deposit representing 20% of the bid price, completed on June 11, 2024;
- the Receiver to enter a lease with Yukon government, to be assigned to 843 on commercially reasonable terms, of the assets being used by Yukon government and its contractors for the remediation and closure activities;
- 843 to be granted the exclusive right to purchase the Intangible Assets; specifically to take an assignment of certain desired contracts to which Minto was a party; and after conducting initial drilling and exploration activities, be permitted to seek an assignment of the mining and water licences, held in the interim by the Receiver.

[13] The Liquidation Plan could not be implemented during the summer because the barge remained non-operational until July 25, 2024. There appeared to the Receiver to be potential to realize significant returns on the assets with the Selkirk First Nation offer, and consequently the Receiver decided to negotiate that bid instead of proceeding with the live auction.

[14] The proposed purchase of the Intangible Assets required Selkirk First Nation to address several concerns set out in the Receiver's fourth report that had not been successfully addressed by previous bidders. Selkirk First Nation was able to address the first two concerns but not the third and fourth concerns as follows:

- a) Drilling and exploration timing – Unlike previous bidders who had proposed a multiyear time frame to complete drilling and exploration to determine mine viability, Selkirk First Nation confirmed it would complete

additional drilling and exploration to assess feasibility of a restart of the mine within a year. Selkirk First Nation submitted a preliminary plan to the Yukon government, confirmed it would not interfere with reclamation activities over the next year, and confirmed its willingness to collaborate with the Yukon government in future years.

- b) Reclamation security bond for future activities – Selkirk First Nation confirmed its assumption of the obligation to make reclamation security payments in the future, if they restart mine activities. Previous bidders had been non-committal on this point.
- c) Regulatory permits and licences holding, reporting obligations, and timing – Holders of mining and water licences and permits have reporting and other obligations. Selkirk First Nation proposed that the Receiver could continue to hold the permits and licences without reporting or other obligations for approximately one year while the First Nation conducted drilling and exploration to assess mine viability. They were not able to confirm approval of this approach with the regulatory bodies or the Yukon government, despite productive discussions to the point that a submission was being prepared for approval by Yukon government Management Board.
- d) Access to reclamation security – The Receiver required that Selkirk First Nation’s acquisition of the mine assets not prevent Yukon government’s access to and use of the reclamation bond provided by Zurich Insurance and guaranteed by Capstone. Selkirk First Nation discussed its plans with

Zurich and Capstone but had not yet received the necessary assurances from Zurich.

[15] While parties expressed cautious optimism about obtaining the approval from the regulators and receiving assurance from Zurich, more time was needed to negotiate these complex issues. At the same time, in the event this offer could not be finalized, the Receiver needed to prepare to remove the equipment from the mine site for the auction before the weather prevented it. Further delay would diminish asset value and postpone recovery for the creditors. The Receiver gave notice to Selkirk First Nation that unless the outstanding items were resolved by August 12, 2024, the Receiver would begin to remove the equipment from the mine site.

[16] Selkirk First Nation could not resolve the issues by August 12 and proposed instead a bifurcation of the proposed transaction into two. The first proposed transaction was their purchase of Building Infrastructure at the mine site and of certain Rolling Equipment including vehicles and machinery required for mining operations; an equipment lease between the Receiver and the Yukon government for assets used for reclamation activities, and its assignment to 843; and an exclusive right of 843 to negotiate the purchase of mineral claims, permits, licences and contracts. The equipment lease assignment was later removed from the asset purchase agreement as the Yukon government and Selkirk First Nation agreed to address the use of equipment after the closing of the first transaction, without the Receiver's involvement. The exclusivity agreement allowed for 843 to negotiate exclusively the purchase of the Intangible Assets with the Receiver until September 30, 2024, or a mutually agreeable later date. The agreement could be terminated on consent; on notice from 843 to the

Receiver that it did not wish to proceed with the second transaction; on notice from the Receiver if it received written notice from Zurich that they would not continue to fund the reclamation security bond; and on notice from the Receiver if it received notification from the Yukon government of its refusal to waive the reporting obligations under the licences and permits while the Receiver held them. The first proposed transaction would not be contingent on the second proposed transaction.

[17] The second proposed transaction, not guaranteed to proceed, was the purchase of the Intangible Assets. It included agreements confirming Zurich's assurance they would continue to fund the reclamation security, and confirming the Receiver may hold the licences and permits on an interim basis without the reporting and other obligations.

[18] The Receiver noted the Selkirk First Nation bid exceeded the FLV of the assets they proposed to purchase. It allowed for additional recoveries for creditors through liquidation of the remaining assets. Excluded from the equipment purchase were three pieces Caterpillar was authorized to remove from the mine site and sell by auction, with proceeds to be held in trust; one piece owned by Finning (Canada) a division of Finning International Inc. ("Finning"); and other rolling equipment not needed by Selkirk First Nation. The payment of the 20% deposit in June showed their commitment to proceed with the purchase, even as they continued to work on the outstanding issues. They had already advanced their resolution further than any other prospective purchaser. As a result, the Receiver decided to proceed with the two proposed transactions.

[19] The amounts of the purchase price and deposit were provided in a confidential supplemental report to the Court.

Parties' Positions on the Selkirk First Nation Bid

[20] The hearing of this application was attended by the primary stakeholders, Selkirk First Nation, Yukon government, Capstone, as well as by many of the lien-holders and other creditors, the primary debtor in possession lender, Maynbridge, and Sumitomo. All of the parties except two took no position or supported the Receiver's proposal. Finning had initially objected, but its issue was adjourned to be discussed with the Receiver, and \$600,000 was put into trust until the issue was settled or adjudicated separately by the Court. Two parties, JDS and Capstone, expressed concerns.

JDS Concerns

[21] JDS argued the Receiver unfairly excluded them from submitting a bid after the May 13, 2024 court hearing. JDS is a \$7 million creditor and lien claimant and was a bidder in the unsuccessful SISP process. They said that on May 16, 2024, the Receiver advised they would accept *en bloc* bids to purchase the Minto Metals Building Infrastructure, Rolling Equipment, and Intangible Assets, as long as there were no conditions precedent and Zurich would continue to fund and allow access by the Yukon government to the reclamation security bond. Based on these requirements, JDS said, they did not submit a bid. However, in JDS's view, the Receiver's acceptance of Selkirk First Nation's bid, proposing two transactions, a purchase of only some of the assets, and an exclusive right to negotiate the agreements for the second transaction, constituted preferential treatment of Selkirk First Nation over JDS or other potential bidders. In effect, JDS said the Receiver restructured the proposed *en bloc* sale to benefit Selkirk First Nation, and prejudiced other bidders.

[22] The Receiver responded they provided JDS and Selkirk First Nation with the same information. When Selkirk First Nation presented its bid on June 10, 2024, the Receiver confirmed that it would accept its bid subject to a removal of all conditions by the time the barge was operating. As noted above, although Selkirk First Nation advanced discussions significantly by August 12, 2024, the date on which the Receiver said they would start removing equipment from the site, the issues had not been resolved. The Receiver accepted Selkirk First Nation's plan to bifurcate the transaction because the cash consideration offered in the first transaction exceeded the FLV for those assets. Further, the possibility of completing the second transaction was the best opportunity for maximizing the value to the stakeholders by restarting the mine. In the Receiver's view, Selkirk First Nation had the most likely chance of resolving the issues to allow for a restart of the mine. No other proposed purchaser had addressed them.

[23] The Receiver noted that Maynards followed up with JDS three times after the May 16, 2024 meeting. On each occasion, Maynards provided information about the process and in the June 13, 2024 email communication, Maynards advised JDS of the receipt of a preliminary bid by another party. After a phone discussion with Maynards, JDS emailed them to advise they were finalizing an *en bloc* bid consisting of a cash component and a credit bid in the form of an aggregation of lienholders' secured perfected claims against Minto Metals. Maynards advised JDS the cash component was inadequate because it was less than the anticipated FLV. Further correspondence continued between Maynards and JDS, but JDS never submitted a formal offer.

[24] The Receiver and Maynards acted reasonably and fairly in this context. Nothing prevented JDS from submitting a bid, even if it needed time to work towards removing

conditions, but it did not. JDS and Selkirk First Nation were provided with the same information. Selkirk First Nation's initial bid did not propose two transactions; this development occurred over several months of ongoing discussions, negotiations, and efforts to remove conditions, in the context of a generous cash offer for assets that exceeded the FLV. In addition, they deposited 20% of the purchase price, confirmed the availability of funds from Selkirk First Nation's own finances for closing, and committed to pay the day of the hearing. As counsel for Selkirk First Nation stated, they were prepared to risk their monies, even on the understanding that the outstanding issues may not be able to be resolved, but with the full commitment to make every attempt to do so. This was more than any other party had done, including JDS, and gave the Receiver sufficient confidence to accept the proposed bifurcated transaction. JDS made no offer to which a comparison could be made and the alleged unfair treatment could be assessed.

Capstone concerns

[25] Capstone supported the first transaction but reserved its rights to oppose any application brought with respect to the second transaction. As the first ranking secured creditor and indemnifier of the reclamation bond, Capstone has expressed concern from the beginning of the receivership about its protracted process and high costs, which they fear are diminishing the returns available to the creditors. Capstone noted with concern that the Receiver's plan to liquidate as of May 13, 2024, confirmed by Court order, was now being revised to return to a sale negotiation despite the outstanding obstacles that had been described in May as too complex to be solved.

[26] The Receiver did not respond directly to this, as Capstone's objection is prospective. I will address Capstone's specific objection if and when it is made.

Approval of the Selkirk First Nation proposed transactions

[27] The following are the reasons for the approval of the sales transaction and agreements.

[28] The Receiver's process in this case was reasonable, open and transparent. The Receiver has considered the interests of all the stakeholders in balancing the various aspects of this complex receivership and has acted prudently and in a commercially reasonable way.

[29] To summarize, after the unsuccessful SISP, the Receiver proceeded as ordered to implement the Liquidation Plan. When this was delayed because of the barge inspection and repairs, and knowing there were more expressions of interest in a purchase of mine assets, the Receiver invited their submission in their ongoing attempt to maximize value for creditors. The non-binding bid by Selkirk First Nation was the only one of three that was considered worth pursuing. The proposed purchase price for the assets exceeded their FLV and created value for creditors. The remaining assets would be liquidated under the court-approved Liquidation Plan. The delay caused by the barge repairs meant that the auction would be delayed in any event until September 2024.

[30] The clear intention of Selkirk First Nation was borne out by their 20% down payment; their commitment to funding the reclamation security bond if the mine restarts; their agreement with the Yukon government allowing it to use equipment for the reclamation work; and their engagement of technical consultants to assist with a feasibility study for exploration towards mine restart, and to address the need to

manage simultaneously the ongoing reclamation work and the new exploration activities. Selkirk First Nation is aware this poses a challenging timing exercise and have undertaken to do the exploration work within a year. Although the issues of Yukon government access to and Zurich's funding of the reclamation bond after an asset sale and during exploration, and the waiver of the reporting obligations under the licences and permits held by the Receiver during exploration are not yet resolved, Selkirk First Nation advanced the discussions towards resolution further than any other proposed purchaser. Without diminishing the issues' complexities, the involved parties expressed cautious optimism at the hearing about their ability to be resolved, noting that good faith negotiations and efforts are occurring. The reasonably grounded expectation is that the outstanding complex issues will be resolved with the hard work of the Receiver, Selkirk First Nation, and the Yukon government, and that the potential re-opening of the mine, combined with the purchase price for most of the assets, and the liquidation of the unpurchased assets, will together provide good value to creditors.

[31] Given the progress thus far, the Receiver's positive assessment of the possibility of a mine restart is reasonable. This outcome would provide employment to Yukoners, economic benefits to the suppliers, many of whom are lienholders, and economic benefits to Selkirk First Nation and the Yukon generally, especially with an appropriate reclamation bond in place, already committed to by Selkirk First Nation, and the completion of the partial ongoing reclamation.

[32] Of importance in this case is the unique aspect of the location of this mine on First Nation settlement land, and the proposed ownership and operation by a self-governing First Nation. As counsel for Selkirk First Nation observed, the acquisition of a

mine by a First Nation is a rare event in Canada. It is a first in the Yukon. It confirms the full participation of Selkirk First Nation as a significant player in the economic life of the Yukon. They and their ancestors are and have been knowledge-keepers, stewards and guardians of their land, and this provides some hope of financial accountability, sufficient investment in good mining practices, and environmental stewardship over the life of the mine and at closure. The recent historical record of hard rock mining in the Yukon to date is dismal in these areas. As noted by Veale J. (as he then was) in *Yukon v BYG Natural Resources Inc.*, 2017 YKSC 2, setting out his reasons for an order approving a solicitation proposal for the sale of B.Y.G. Natural Resources Inc.'s assets and for remediation at the Mount Nansen mine site, after B.Y.G. abandoned the mine:

[8] ... this is not the first time in recent Yukon history that a mining company has conducted itself in bad faith, collapsed into bankruptcy and abdicated its reclamation responsibilities to the governments of Canada and Yukon. The tailings pond of the Faro lead-zinc mine, which was described as a “toxic blight” on its abandonment in 1998, is considered to be one of Canada’s largest environmental disasters at a price tag of between \$250 and \$350 million to date and a lifetime reclamation cost of \$1 billion.

[33] The Court went on to conclude correctly that there have been substantial changes to the mining approval and monitoring regime since B.Y.G. was granted the right to operate in the Yukon in the late 1990s. However, since 2017, the Yukon has had to pay for the reclamation and remediation resulting from the abandonment of the Wolverine Mine, the abandonment of the Minto mine (once the reclamation fund is exhausted), and the heap leach collapse at Eagle Gold. Local First Nation ownership and operation of this mine presents an opportunity to change this unfortunate legacy.

[34] Finally, subsections 2(a), (h), (j), and (k) of the Receivership Order expressly provide the Receiver with the ability and authority to market and sell the mine assets, undertaking and property, to implement the Liquidation Plan for any assets not purchased, and to enter into sale and exclusivity agreements. Section 243(1)(c) of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3 (the “BIA”) further allows the Court to authorize a receiver to take any action the court considers advisable, as long as it is just and convenient. This section has been interpreted to include the approval of vesting orders in court-appointed receiverships on the basis they are incidental and ancillary to a receiver’s power to sell (*Third Eye Capital Corp v Dianor Resources Inc*, 2019 ONCA 508 (“*Dianor*”) at para. 87; *Royal Bank of Canada v Eastern Infrastructure Inc*, 2019 NSSC 297 at para. 2).

[35] For all of these reasons, the orders to approve the sale transaction and authorizing the Receiver to execute the sale agreement, vesting the right, title and interest of Minto Metals in and to the purchased assets as set out in the sale agreement free and clear of encumbrances, to approve the exclusivity agreement and authorizing the Receiver to execute it, were granted.

Approving the Receiver’s Activities and Increasing Receiver’s Charge and Borrowing Charge

[36] Section 243(1)(c) of the *BIA* has been interpreted to give a court broad powers to respond to the many circumstances that may arise in the course of a receivership. Courts are guided in the exercise of this authority by what “justice dictates” and “practicality demands” in the context of the purpose of receiverships: “to enhance and facilitate the preservation and realization of the assets for the benefit of creditors”. This has been understood to involve liquidation of assets, and also an order authorizing a

sale of the debtor's property by the receiver (*Dianor* at para. 57; *DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, 2021 ABCA 226 at para. 20).

[37] A receiver is a court-appointed officer. It has expertise in the field of bankruptcy and insolvency and is using that expertise to do the work that the court would otherwise have to do, where the work involves a sale of property (*2403177 Ontario Inc v Bending Lake Iron Group Limited*, 2016 ONSC 199 at para. 73, quoting *Re Selkirk* (1986), 58 CBR (NS) 245 (Ont SC) at 246). A receiver is thus entitled to considerable deference, especially with respect to its business decisions.

[38] The process of seeking court approval of the receiver's activities requires the receiver to be accountable to the court and the stakeholders for its activities, allows for any concerns of stakeholders to be articulated and addressed, and for problems to be rectified, allows the receiver to move forward with the next steps, protects creditors from delay and disruption caused by litigation of issues and indemnity claims by the receiver, provides protection for receivers for activities done that may not be provided by the *BIA* or the receivership order, and allows the court to be satisfied that the receiver is acting in a prudent, diligent and commercially reasonable way (*Target Canada Co (Re)*, 2015 ONSC 7574 at paras. 22-23).

[39] Here, the activities conducted by the Receiver for which approval is sought are set out above in para. 5. They are authorized by s. 2 of the Receivership Order and were for the purpose of enhancing and facilitating the preservation and realization of Minto's property for the benefit of its creditors. An order approving the activities is within the scope of s. 243(1)(c).

[40] The Receiver is requesting an increase in its Charge and the Borrowing Charge from \$1,000,000 to \$2,700,000 to cover its completed and ongoing activities, specifically: the closing of the first transaction; the conduct of the liquidation and sale of the assets excluded from the sale; negotiating the sale to 843 of the Intangible Assets and if successful, completing the documentation and facilitating the closing of the sale; and preparing a creditor claims analysis.

[41] The Receiver's ability to borrow money and give security on the debtor's property may be authorized by the Court under s. 31 of the *BIA*. The borrowings must be repaid from the debtor's property in priority to the creditors' claims. Paragraphs 26 and 29 of the Receivership Order provide for a Receiver's Charge and a Receiver's Borrowing Charge on the Minto Metals property. While paragraph 30 provides that the Charges shall not exceed \$500,000, paragraph 44 permits the Receiver to apply to the Court for advice and directions in the exercise of its powers. It is under this section that the Receiver previously applied to increase the amount to \$1,000,000 and is applying now.

[42] There is no doubt that counsel for Capstone is correct in saying that this receivership process has been and continues to be expensive. Yet, the complexities of the file that have been clearly described by the Receiver, and confirmed by Selkirk First Nation and the Yukon government, as well as the high stakes outcome and possibility of real return for creditors if the transactions are successful, justify the increase in Charges requested.

Sealing Order

[43] Finally, the Receiver seeks an order sealing the confidential supplement to the fifth report, because it attached unredacted copies of the sale agreement, including

purchase price, the exclusivity agreement, including a floor price for the Intangible Assets, and containing a copy of the Receiver's liquidation analysis. Public disclosure of any or all of these amounts may affect the ability of the Receiver to obtain appropriate value for the assets not included in the sale agreement, or in the event that a sale is necessary of all of Minto Metals' assets in future.

[44] Applying the three-step test for a restriction on court openness set out in *Sherman Estate v Donovan*, 2021 SCC 25 at para. 38, the Receiver has satisfied the test for sealing the confidential supplement to the fifth report because: 1) public disclosure of these values could result in reduced recoveries and a detrimental impact on creditors; 2) there is no reasonable alternative to a time limited sealing order; and 3) the benefits of maximizing recoveries for the creditors by sealing the information outweigh any negative effects on the open-court principle.

[45] The sealing order shall be time-limited, however, until 30 days after the auction of the assets not included in the purchase by Selkirk First Nation is completed.

Conclusion

[46] The orders have been filed in accordance with the above decision and reasons.

DUNCAN C.J.