No. S236214
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

1392752 B.C. LTD.

PETITIONER

AND:

SKEENA SAWMILLS LTD.
SKEENA BIOENERGY LTD.
ROC HOLDINGS LTD.

RESPONDENTS

WRITTEN ARGUMENT OF THE PETITIONER & CUI FAMILY HOLDINGS LTD.

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I. INTRODUCTION

1. These written submissions are in support of an application by the receiver, Alvarez & Marsal Canada Inc. (the "**Receiver**), for an order approving a Retention and Payment Agreement (the "**Agreement**") dated February 29, 2024, between the Receiver and Cui Family Holdings Ltd. ("**Cui Holdings**").

2. These written submissions are duplicative and an expansion of the content of the Application Response filed by Cui Holdings on March 18, 2024.

II. BACKGROUND

A. The Parties

3. Skeena Sawmills Ltd. ("**Sawmills**"), Skeena Bioenergy Ltd. ("**Bioenergy**") and ROC Holdings Ltd. ("**ROC**" and together with Bioenergy and Sawmills, the "**Skeena Entities**") are related entities. Sawmills and Bioenergy respectively operated a sawmill and pellet plant in Terrace, British Columbia. ROC is the owner of the real property on which Sawmills and Bioenergy operated.

4. Cui Holdings is related to the Skeena Entities and the Petitioner, 1392752 B.C. Ltd. (the "**Lender**"). Specifically, Cui Holdings, the Skeena Entities and the Lender are controlled by Xiao Peng Cui ("**Mr. Cui**") and Shenwei (Sandra) Wu ("**Ms. Wu**" and together with Mr. Cui, the "**Shareholders**") who acquired the Skeena Entities approximately 12 years ago.

5. Since the Shareholders' acquisition, the Skeena Entities have suffered consistent financial losses, which were historically funded by unsecured loans provided by the Shareholders

(the "**Shareholder Loans**"). The indebtedness owing under the Shareholder Loans was ultimately assigned to the Lender.

6. The Skeena Entities' cumulative deficit for years ending 2015 through June 30, 2021 was $69,288,114. The Shareholders advanced approximately $143 million in Shareholder Loans to the Skeena Entities since 2011 to fund, among other things, operating losses, capital expenditures and other working capital needs.

7. In January 2023, the Shareholders decided they could no longer continue to make these unsecured advances. As a result, the Lender determined that it was unable to maintain the status quo and issued demand upon the Skeena Entities in January 2023.

8. Later in 2023, it became clear that the Skeena Entities would need to initiate restructuring proceedings to salvage its business. Ultimately, the Lender commenced these receivership proceedings on September 8, 2023.

9. By order granted September 20, 2023 (filed September 21, 2023), Alvarez & Marsal Canada Inc. was appointed as the Receiver of all the assets, undertakings and property of the Skeena Entities.

10. Beginning on October 31, 2023, the Receiver commenced a sales process for the Skeena Entities. Following the consideration of a number of bids, the Receiver entered into negotiations with and signed the Agreement with Cui Holdings.

B. The Licenses and the Agreement

11. Sawmills holds Forest License A16882 ("**A16882**") and Tree Farm License 41 ("**TFL-41**" and together with A16882, the "**Licenses**") issued by the Province. Pursuant to the *Timber Harvesting Contract and Subcontract Regulation,* BC Reg. 22/96 (the "**Regulations**"), Sawmills, as holder of the Licenses, is obligated to harvest a proportion of timber using replaceable timber harvesting contracts (the "**Bill-13 Contracts**").

12. Sawmills is also the holder of Forest License A16885 which has no Bill-13 Contracts associated with it.

13. Cui Holdings and the Receiver entered into the Agreement, which facilitates, via a reverse vesting order (an "**RVO**"), the retention of Cui Holdings' shares in ROC and Bioenergy, as well as to vest off all Excluded Liabilities (as defined in the Agreement) including, among other things, the two Bill 13 Contracts.

14. In addition to the $7.614 million of further advances under the Shareholder Loans that Cui Holdings used as a credit bid, the Cui Holdings' offer leading to the Agreement is significant, and includes:

(a) approximately $4.5 million to repay claims against the Skeena Entities ranking in priority to the claims of the Lender;

(b) approximately $1 million to fund these Receivership Proceedings;

(c) interest earned on the Promissory Notes to the end of February 2024 in the aggregate amount of $431,255.96; and

(d) $400,000 on account of the Skeena Entities' inventory.

Wu #1, para. 16.

15. Cui Holdings also plans to invest in excess of $26 million into Sawmills and Bioenergy's sawmill and pellet plant business (the "**Business**") over the next three years to improve and modernize production capacity. These funds will come from Cui Holdings and other investors.

Wu #1, para. 28.

16. Cui Holdings is committing to this significant investment with the intent of restarting the Business upon closing the Agreement.

Wu #1, para. 68.

17. When fully operational, the Business previously employed approximately 150 individuals. Historically, the Business also purchased products and services from over 200 businesses or individuals, many of which are located in Terrace or the surrounding areas.

Wu #1, para. 18.

18. Cui Holdings is proposing to make the above-noted investment and re-start the Business with a view to returning it to full operational and economic viability. Once operating, Cui Holdings expects the Business will employ approximately the same number of people and will require the provision of services and products from local businesses at roughly the same levels as it has in the past.

C. The Impact of Retaining the Bill 13 Contracts

19. Given the losses over the last 12 years and the working capital requirements needed to make the Business economically viable, Cui Holdings must ensure that:

(a) the Business's debt load is manageable; and

(b) the above-market costs of the Bill 13 Contracts do not continue.

20. Historically, the cost of the Bill 13 Contracts materially contributed to the losses suffered by the Skeena Entities. If the Business is to have any realistic chance of surviving as a

viable entity, it is imperative that it not be burdened by the current Bill 13 Contracts, including the significant time and expense that will otherwise be taken up dealing with the current protracted rate disputes and litigation with the two Bill 13 Contractors: Terrace Timber Ltd. ("**Terrace Timber**") and Timber Baron Contracting Ltd. ("**Timber Baron**").

21. For example, as a result of the rate disputes with Timber Baron and Terrace Timber, Sawmills incurred legal fees in excess of $380,000 from the period of June 2020 to September 2023. That type of expense, and others like it, are not ones the Business can continue to incur if it is to survive.

Wu #1, para. 37.

22. As a result, and based on the Skeena Entities' past experiences, retaining the Bill 13 Contracts is unsustainable for the Business and detrimental to its long-term economic viability. Accordingly, the Agreement is conditional on Cui Holdings' ability to exclude the Bill 13 Contracts.

Wu #1, para. 38.

D. Disputes with Timber Baron

i. The Timber Baron Bill 13 Contract

23. Sawmills and Timber Baron were parties to a Replaceable Interior Timber Harvesting Subcontract (the "**Timber Baron Bill 13 Contract**") dated January 1, 2016, for harvesting services on the lands covered by A16882. The Timber Baron Bill 13 Contract expired on December 31, 2020. By operation of the Regulations, the Timber Baron Bill 13 Contract remained in force.

24. As of September 2023, Sawmills and Timber Baron had not agreed on the terms of a replacement contract, primarily as a result of a series of long-standing disputes, including rate disputes (the "**Timber Baron Rate Disputes**"), and allegations by Timber Baron that Skeena had failed to allocate sufficient work to it pursuant to the Timber Baron Bill 13 Contract.

25. No work has been performed by Timber Baron on the lands covered by A16882 since July 2022.

Wu #1, para. 41.

ii. The Timber Baron Rate Disputes

26. The rate disputes with Timber Baron are set out in Notices of Dispute issued by Sawmills on November 5, 2021, April 22, 2022 and March 22, 2023, respectively (the "**Timber Baron Rate Disputes**"). The Timber Baron Rate Disputes pertain to rates payable for timber

harvesting in nine specific areas within the lands covered by A16882, each known as a “cutblock” and measured in cubic meters (m3).

[redacted]

[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
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[redacted]	[redacted]	[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

E. Disputes with Terrace Timber

i. The Terrace Timber Bill 13 Contract

30. Sawmills and Terrace Timber were parties to a Replaceable Coast Stump to Dump Timber Harvesting Contract (the "**Terrace Timber Bill 13 Contract**") dated January 1, 2015, for harvesting services on the lands covered by TFL-41. The Terrace Timber Bill 13 Contract expired on December 31, 2019. By operation of the Regulations, the Terrace Timber Bill 13 Contract remained in force pending a further agreement or resolution between the parties.

31. As of September 2023, Sawmills and Terrace Timber were unable to agree on the terms of a replacement contract as a result of, primarily, rate disputes (the "**Terrace Timber Rate Dispute**") for 12 disputed cutblocks (the "**Disputed Cutblocks**").

32. In 2022, Terrace Timber proposed various rates, formally and informally, to Sawmills, all of which were well above the fair market value for the harvesting services. Sawmills did not accept any of these rates because they were too expensive but agreed, pending a final resolution, to pay Terrace Timber a provisional rate for harvesting work completed on the Disputed Cutblocks in accordance with the Regulations.

Wu #1, para. 48.

33. No work has been performed by Terrace Timber on the lands covered by TFL-41 since at least May 2023.

Wu#1, para. 49.

ii. Attempted Resolution of Terrace Timber Rate Dispute

34. In July 2022, Sawmills and Terrace Timber engaged Timber Tracks Inc. ("**TTI**"), a third-party service logging expert, to provide an opinion on the appropriate rates to resolve the Terrace Timber Rate Dispute.

35. On December 21, 2022, TTI issued a preliminary report (the "**Preliminary Report**") opining that the rate applicable to the Disputed Cutblocks was $49.29/m3 on 144,664 cubic meters of timber, for a total amount of $7,127,531 (the "**TTI Rate**"). Sawmills rejected the methodology used by TTI in coming up with this rate because it was inconsistent with the framework established by the Regulations. As a result of this, in January 2023, Sawmills terminated the engagement with TTI before a final report was issued.

Wu #1, para. 42.

36. Despite the ongoing Terrace Timber Rate Dispute, Sawmills continued to pay the Provisional Rates to Terrace Timber until, at least, late January 2023.

Wu #1, para. 53.

37. As of January 2023, Sawmills had paid Provisional Rates to Terrace Timber totaling $5,783,109.95. This represented over 80% of the TTI Rate and a difference of $1,344,421.05 annually from the TTI rates (the "**Terrace Timber Delta**").

Wu #1, para. 54.

iii. Registration of Contractor Charges and Filing of Petition

38. In January 2023, Terrace Timber registered a contractor lien and charge in the British Columbia Personal Property Registry against Sawmills asserting that it was owed the Terrace Timber Delta (the "**Terrace Timber Charges**").

39. On January 25, 2023, Sawmills filed a petition with the court seeking, among other things, a declaration that the Terrace Timber Charges were invalid and an order that they be discharged.

40. In reasons for judgment indexed as *Skeena Sawmills Ltd. v. Terrace Timber Ltd.*, 2023 BCSC 550 (the "**Reasons**"), Justice Chan held, among other things, that that the Terrace Timber Charges were invalid and ordered that they be discharged.

Wu #1, paras. 56 - 58.

F. Sustainability of the Bill 13 Contracts

41. The rate disputes with Timber Baron and Terrace Timber illustrate that these contractors sought to have Sawmills pay higher than market rates, despite the fact that Sawmills was unprofitable and losing money year-over-year.

42. The Bill 13 Contracts are not competitive or fair market value contracts. If they are assumed as part of the Agreement, then this will prevent Sawmills' ability to operate the Business in an economically sustainable manner. If the Business is to be operated sustainably, proactive steps must be taken to eliminate unnecessary and excessive expenditures. The future costs of the Bill 13 Contracts are unnecessary and avoidable expenses. The harvesting services on the Licenses can likely be provided by other local service providers at a lower, more competitive costs.

[redacted]

43. In the event the Bill 13 Contracts are not excluded from the Agreement, the Business will also inherit the on-going and unresolved rate disputes with Timber Baron and Terrace Timber. Sawmills incurred in excess of $380,000 in legal fees over a three-year period without achieving any meaningful progress in resolving them. As a result, if the Bill 13 Contracts are part of the Agreement, the Business will continue to incur legal fees in the coming years to defend these rate disputes. The ongoing rate disputes will also take up the time of management.

Wu #1, para. 64.

44. Based on the foregoing, retaining the Bill 13 Contracts will be materially detrimental to Cui Holdings' ability to restart the Business in an economically-viable manner. For this reason, the Agreement is conditional on excluding the Bill 13 Contracts, failing which, Cui Holdings will not complete the Agreement.

Wu #1, paras. 65 - 66.

G. Negotiations with First Nations

45. Until the summer of 2023, Sawmills was in advanced discussions and negotiations with various First Nations, to enter joint ventures for the sharing of the Licenses and the volume associated with the forest licenses of the First Nations. The negotiations with the First Nations for these joint ventures were intended to provide additional timber supply to Sawmills. The Business will require this additional timber to run economically, and once properly capitalized, Sawmills' intention is to pick up and conclude these negotiations with the local First Nations to secure the necessary additional timber supply.

Wu #1, para. 67.

H. Other Factors

46. There are no prohibitions in the *Forest Act* or the Regulations that expressly prohibit the handling of Bill 13 Contracts by way of an RVO.

47. Had the Province wished to preclude the ability of a receiver (or a monitor or a bankruptcy or proposal trustee) from dealing with Bill-13 Contracts by way of an RVO, then it could (and can) amend the legislation to do so. For undisclosed reasons, the Province has chosen not to do this.

III. ISSUE

48. The primary issues on this application are:

(a) whether this Court has the jurisdiction to grant an RVO; and

(b) if so, whether, after considering the *Harte Gold* factors, this Court should approve the Agreement and grant the RVO.

IV. ANALYSIS

49. There are effectively two scenarios for the conclusion of this receivership. The first is the court approval and subsequent implementation of the Agreement, including the granting of the RVO. In this scenario, the Business will continue as a going concern.

50. The second scenario occurs if the Agreement is not approved. If this occurs, then:

(a) the Receiver will conduct a piecemeal liquidation of the assets of the Skeena Entities;

(b) the Licenses will either be sold to a third party or parties, most likely without the Bill 13 Contracts attached, or be incapable of sale at all;

(c) if there is a sale of the Licenses, any transfer will be subject to a length consultation process with the Ministry of Forests and First Nations, the outcome of which is uncertain and may not be approved by the Province; and

(d) the Business will cease as a going concern.

51. The Skeena Entities may or may not become bankrupt as part of this process. The receivership costs will go up, leaving less for distribution to creditors. The amounts generated from a piecemeal sale of the assets of the Skeena Entities will be far less than the value to be received by way of the Agreement.

A. Jurisdiction to Grant the RVO

52. While still evolving, the scope of the jurisdiction to use RVOs has been the subject of continuing judicial refinement and clarity. What can confidently be established at present is that the evolving jurisprudence on RVOs includes findings that this Court has the jurisdiction to use an RVO to vest off contracts and liabilities, including those liabilities imposed by legislation. That jurisdiction exists in a receivership and Bill 13 Contracts are treated as contracts that can be disclaimed in a receivership.

i. Jurisdiction Generally

53. This Court has the required jurisdiction to approve the Agreement and grant the RVO.

54. The starting point on this issue is the 2005 decision in *New Skeena Forest Products Inc., Re v. Don Hull & Sons Contracting Ltd.* The Court of Appeal held that a court-appointed receiver had the authority to disclaim contracts, including Bill 13 Contracts, subject to the usual equitable considerations.

New Skeena Forest Products Inc., Re v. Don Hull & Sons Contracting Ltd., 2005 BCCA 154, paras. 14 – 33 [_New Skeena_].

55. The powers of the receiver in *New Skeena* are effectively identical to the Receiver's powers in this proceeding: both have the authority to disclaim contracts. *New Skeena* confirms this common law authority in receivers.

New Skeena, paras. 7 and 20;
Receivership Order, paras. 3(b) and (m).

56. In addition, the court in *New Skeena* also confirmed that Bill 13 contracts may be terminated without offending provincial legislation:

> [14] After considering the parties' submissions on the issue of the nature of the contractors' replaceable contract rights, I agree in substance with Chief Justice Brenner's reasons. I see no error in principle in what he has said on the matter. In addition, I find these comments of Mr. Justice Thackray, who was then a judge of the Supreme Court, in the context of an earlier reorganization by New Skeena, persuasive:
>
> > I do not accept that allowing the petitioner to terminate renewable contracts is a striking down of provincial legislation. I mentioned several times to Mr. Ross that I could and do go so far as to find that there is legislat[ive] involvement in replaceable contracts under the Forest Act. However, I cannot accede to the position taken by Mr. Ross that these contracts attain some classification that makes them almost statutory contracts and thereby subject to some different rule of the law than general commercial contracts....

New Skeena, para 14.

57. More recently in *PaySlate #1*, this Court surveyed the relevant judicial authorities and noted those confirming the existence of the jurisdiction to grant an RVO in a receivership and other insolvency proceedings.

PaySlate Inc. (Re), 2023 BCSC 608, paras. 84 - 86 [_PaySlate #1_].

58. In *PaySlate #1*, the court noted that "RVOs are often thought to be appropriate in situations where the debtor's licenses cannot be vested on an asset sale." The Licenses are an asset of Sawmills that cannot be vested in a third party as part of a sale without incurring the time, expense and risk of the consultation process and Ministry of Forests oversight that would otherwise be required. While the application for an RVO in *PaySlate #1* was dismissed, the RVO was subsequently approved following the provision of additional evidence noted as lacking in *PaySlate #1*.

PaySlate #1, para. 80; _PaySlate Inc. (Re)_, 2023 BCSC 977 [_PaySlate #2_].

59. Further, in *PaySlate#1*, the court canvassed judicial authorities respecting the appropriateness of RVOs, including *Just Energy Group Inc. et al. v Morgan Stanley Group Inc. et al.*, 2022 ONSC 6354, which also noted previous authority that RVOs are appropriate in circumstances where:

(a) The debtor operates in a highly-regulated environment in which its existing permits, licenses or other rights are difficult or impossible to reassign to a purchaser.

(b) The debtor is a party to certain key agreements that would be similarly difficult or impossible to assign to a purchaser.

(c) Where maintaining the existing legal entities would preserve certain tax attributes that would otherwise be lost in a traditional vesting order transaction.

PaySlate #1, para. 88.

60. More recently, this court affirmed the jurisdiction to use an RVO found in *PaySlate #1* in a receivership context. In *Peakhill*, a receiver sought an RVO to divest a debtor of the requirement to pay property purchase tax. The Province vigorously opposed this outcome as it does in the present receivership. In *Peakhill*, Justice Loo noted:

> [19] The receivership order in this case was sought pursuant to s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 [*BIA*] and s. 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 [*LEA*].
>
> [20] In *PaySlate #1*, Justice Walker found that an RVO may be granted under this Court's general jurisdiction under s. 183(1)(c) of the *BIA* which provides:
>
> > 183(1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers …
> >
> > (c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;
>
> [21] In *PaySlate #1*, Justice Walker held:
>
> > [84] Although many of the case authorities discussing the circumstances in which RVOs may be issued are in the context of the *CCAA*, RVOs are available tools in other insolvency cases as well. Similar considerations apply in the context of the *BIA*.
> >
> > […]
> >
> > [86] In addition to *Blackrock Metals*, *Harte Gold*, and *Quest*, there are other case authorities finding jurisdiction to order RVOs, including a notice of intention to make a proposal under the *BIA* (case name is underlined), and receivership proceedings, such as: *Plasco Energy* (July 17, 2015), Toronto CV-15-10869-00 (Ont. S.C.J. [Comm. List]); *Stornoway Diamond Corporation* (October 7, 2019),

> Montreal 500-11-057094-191 (Q.C.S.C. [Comm. Div.]); *Wayland Group Corp.* (April 21, 2020), Toronto CV-19-00632079-00CL (Ont. S.C.J. [Comm. List]); *Comark Holdings Inc.* (July 13, 2020) […] [emphasis added]
>
> [22] In my view, the issue of whether this Court has jurisdiction to grant RVOs in proceedings under the *BIA* was raised squarely and decided in *PaySlate #1*. In my respectful view, the decision of Justice Walker was both correct and determinative of the issue.

Peakhill Capital Inc. v. Southview Gardens Limited Partnership, 2023 BCSC 1476, paras. 19 - 22 [_Peakhill_].

61. As in *Peakhill*, this receivership proceeding was commenced under s. 243 of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3 ("**BIA**") and the *Law and Equity Act*, RSBC, 1996, c. 253 ("**LEA**").

Peakhill, para. 19; Petition, paras. 41 and 42.

62. Further, the court in *Peakhill* used the jurisdiction to grant an RVO in circumstances where the sole purpose was "tax-related objectives" that effectively defeated a legislated tax liability otherwise triggered on the transfer of real property: specifically, the avoidance of paying property transfer tax.

Peakhill, paras.6, 30 - 35 and 51.

63. *Peakhill* also provides a judicial response to the arguments made in this proceeding by the Province and the two Bill-13 Contractors. For example, the Province argues that "the effect of the Skeena RVO is to usurp valid provincial legislation" (the *Forest Act*, RSBC 1996, c. 157 (the "***Forest Act***")) and that "a receiver's powers do not enable it to contravene laws of general application."

HMTK Application Response, paras. 48 and 50.

64. In *Peakhill*, the court noted that the Province could legislate a prohibition on the use of RVOs as a means to avoid payment of property purchase tax by way of a share transfer but "it has not done so". Similarly, the Province can legislate a prohibition on vesting off Bill 13 Contracts in insolvency proceedings but "it has not done so".

Peakhill, para. 67.

65. The Province also raises various objections to the proposed RVO on the grounds that it involves a "disposition" of the Licenses and, as such, avoids legislated obligations including the duty to consult First Nations. Respectfully, the Province conflates a disposition of the License with the use of an RVO which leaves the Licenses in the name of the original holder, Sawmills, and transfers only certain liabilities, the Bill 13 Contracts, to ResidualCo. The Licenses are not as

a matter of law being "disposed of" or "transferred". Therefore, any process that would otherwise be triggered by a "disposition" or "transfer" of the Licenses is not engaged. Moreover, there is no change to the ownership structure of the license holder that would otherwise trigger Provincial oversight pursuant to the *Forest Act* or a consultation process.

HMTK Application Response, paras. 51 - 53.

66. A corollary to this is that because the use of an RVO is not a "disposition" of the Licenses, the RVO does not trigger or "usurp" the various requirements or policies created by the *Forest Act* as argued by the Province. The use of an RVO is not contrary to anything in the *Forest Act*. Because the RVO is not a "disposition" of the Licenses, the RVO does not trigger: a) the need for "the Minister's approval" under the *Forest Act*, b) any obligation to make "payment of all money due"; c) compel the assumption of the Bill 13 Contracts; or d) the need for a lengthy consultation process with First Nations. After the RVO is granted, the Licenses will remain with the original holder: Sawmills. For this reason, the use of an RVO does not contradict or "usurp" provincial legislation.

HMTK Application Response, paras. 52 and 53.

67. Based on the authority of *New Skeena, PaySlate #1* and *Peakhill*, this Court has jurisdiction to grant an RVO in the circumstances of this receivership to "vest off" the Bill 13 Contracts from the Licenses.

ii. Statutory Jurisdiction

68. As previously noted, this receivership proceeding was commenced and the Receiver was appointed under s. 243 of the BIA. Section 243 of the BIA provides:

> 243(1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:
>
> (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
>
> (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
>
> (c) take any other action that the court considers advisable.

69. Courts have interpreted the expansive wording under s. 243(1) (c) of the BIA as giving judges the "broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that may arise" in relation to court-ordered receiverships.

***DGDP-BC Holdings Ltd. v. Third Eye Capital Corporation*, 2021 ABCA 226, para. 20.**

70. This breadth of jurisdiction under s. 243 thus permits a court to do not only what "justice dictates" but also what it "practically demands".

***Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508, para. 57 [*Third Eye*].**

71. The broad, liberal, and purposive interpretation of the BIA receivership provisions, including s. 243(1)(c), underscore that the court has the implicit jurisdiction to approve a sale proposed by a receiver and courts have historically acted on that basis. There is no need to have recourse to provincial legislation to sustain that jurisdiction.

***Third Eye*, para 76.**

72. The Province cites academic criticism of the decision in *Peakhill* over the finding of statutory jurisdiction for RVOs under section 183 of the BIA. The criticism is that the breadth of the language in section 11 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**") under which RVOs were initially ordered is not echoed in section 183 of the BIA.

HMTK Application Response, para. 45.

73. The Province's argument (and the views of Professor Sabzevari[1]) is misplaced. There is equivalency between the language in section 11 of the CCA and section 243(1)(c) of the BIA. Section 11 of the CCAA provides:

> Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.
> [emphasis added]

74. As noted above, section 243(1)(c) of the BIA similarly provides that the:

> . . . court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

[1] Prof. A. Sabzevari, "A Hill Too Far: Reveres Vesting Orders in BIA Receiverships", Feb. 26, 2024, https://canliiconnects.org/en/commentaries/93579

[...]

(c) take any other action that the court considers advisable.

[emphasis added]

75. There is no meaningful difference in the scope of the relevant language used in these sections of the CCAA and the BIA.[2] As a result, the breadth of the jurisdiction reposed in the court to grant an RVO as the type of "extraordinary remedies" available under the CCAA also exists within the statutory authority provided under the BIA. Both pieces of legislation "serve[] the same remedial purpose" and "should be treated in a harmonized fashion".

Prof. J. Sarra, "Reverse Vesting Orders – Developing Principles and Guardrails to Inform Judicial Decisions", 2022 CanLIIDocs 431;
***Brunswick Health Group Inc. (Re)*, 2023 QCCS 4643, paras. 43 and 46.**

76. In any event, this Court has also anchored the statutory jurisdiction to order an RVO within section 183 of the BIA.

***PaySlate #1*, para. 85.**

77. As a result, there is judicial authority supporting the statutory jurisdiction of the Court under the BIA to employ RVOs when appropriate and in alignment with the purposes of the BIA, including the financial rehabilitation of an insolvent corporate debtor.

iii. Inherent Jurisdiction

78. The court also has an inherent jurisdiction in insolvency matters that includes the ability to order RVOs in appropriate circumstances.

79. The existence of the court's inherent jurisdiction, including specifically in the exercise of its jurisdiction under the BIA, is recognized in s. 183. Section 183 provides:

> 183 (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:
>
> […]
>
> (c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court.

[2] Though not expressly addressed in this argument, similarly broad language regarding the appointment of a receiver exists in section 39 of the LEA.

80. Early cases confirmed that the jurisdiction under section 183 of the BIA is broad. The Supreme Court of Canada held that this section confers a "broad scope of authority" on superior courts to deal with most bankruptcy disputes, as "[a]nything less would unnecessarily complicate and undermine the economical and expeditious winding up of the bankrupt's affairs."

***Sam Lévy & Associés Inc. v. Azco Mining Inc.*, 2001 SCC 92, para. 38**

81. Inherent jurisdiction has been exercised more often under the CCAA, presumably because its skeletal nature leaves more statutory gaps than is the case with the BIA, which offers a detailed rules-based regime. However, courts have held that they could exercise inherent jurisdiction to effect a remedy or fill statutory gaps, provided that it is necessary to promote the objectives of the BIA. On an analysis of the existence of inherent jurisdiction, "the same inherent jurisdiction exists whether the CCAA or the BIA is applied".

***Endean v. British Columbia*, 2016 SCC 42, para 24;**
***Syndic de Chronométriq inc.*, 2023 QCCA 1295, para. 60 [*Syndic de Chronometriq*];**
***Canada v. Canada North Group Inc.*, 2021 SCC 30, para 138;**
***Kingsway General Insurance Company v. Residential Warranty Company of Canada Inc. (Trustee of)*, 2006 ABCA 293, para 21.**

82. In that sense, the exercise of inherent jurisdiction adopts a hierarchal approach. First, the court must analyze the text of the statute to determine whether statutory authority exists and identify what limits are placed thereon. If the court finds that the BIA is silent on a point or does not deal with a matter exhaustively, then it must balance competing interests and only grant the relief sought if the benefit of granting that relief outweighs the relative prejudice to those affected by it.

***Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60, para. 65;**
***Golfside Ventures Ltd (Re)*, 2023 ABKB 86, para 46.;**
***Syndic de Chronometriq*, para. 60.**

83. If this Court finds that the BIA does not specifically address or contemplate RVOs in the context of receiverships, this creates a "gap" regarding the statutory powers available under the BIA to employ RVOs. As such, the court may resort to its inherent jurisdiction to consider the use of an RVO to further the objectives of a receivership. The question then is only whether an RVO is appropriate in the given circumstances.

B. The *Harte Gold* Factors and the Purpose of Canada's Insolvency Regime

84. In the present case, the benefits of granting the RVO outweigh any relative prejudice to those affected by it. The purpose of receiverships under the BIA is to "enhance and facilitate the preservation and realization of the assets [of a debtor] for the benefits of creditors." The Agreement and the RVO are likely the only method by which the Receiver may maximize the realization value of the Skeena Entities' assets for the benefits of its creditors. An RVO is also the

best way to benefit other stakeholders in the local community, such as employees and local vendors, by allowing the Business to continue in operation.

85. The prejudice caused by the reliance upon an RVO for those affected by it, such as the Bill 13 Contractors, is virtually identical to the prejudice they will suffer in a piecemeal liquidation and possible bankruptcy of the Skeena Entities. The Bill 13 Contracts will be disclaimed and/or the Licenses will be revoked.

86. Courts in British Columbia grant RVOs in appropriate circumstances. This Court has endorsed the *Harte Gold* factors as those to be considered in determining whether an RVO is appropriate:

(a) why is the RVO necessary?;

(b) does the RVO structure produce an economic result at least as favourable as any other viable alternative?;

(c) is any stakeholder worse off under the RVO structure than they would have been under any other viable alternative?; and

(d) does the consideration being paid for the debtor's business reflect the importance and value of the licenses and permits (or other intangible assets) being preserved under the RVO structure?

Peakhill, para. 76, citing _Harte Gold Corp. (Re)_, 2022 ONSC 653 [_Harte Gold_].

87. The Supreme Court of Canada has also commented on the overarching remedial objectives of Canada's insolvency statutes:

> [40] Together, Canada's insolvency statutes pursue an array of overarching remedial objectives that reflect the wide ranging and potentially "catastrophic" impacts insolvency can have (*Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271, at para. 1). These objectives include: providing for timely, efficient and impartial resolution of a debtor's insolvency; preserving and maximizing the value of a debtor's assets; ensuring fair and equitable treatment of the claims against a debtor; protecting the public interest; and, in the context of a commercial insolvency, balancing the costs and benefits of restructuring or liquidating the company […]

9354-9186 Québec inc. v. Callidus Capital Corp., 2020 SCC 10, para 40 [_Callidus_].

88. In *Harte Gold*, Justice Penny made the following comments on *Callidus*:

> [32] The SCC in *Callidus* made an important point in the context of the limits of broad discretion; all discretion has limits and its exercise under s.

> 11 must accord with the objectives of the CCAA and other insolvency legislation in Canada. These objectives include: providing for timely, efficient and impartial resolution of a debtor's insolvency; preserving and maximizing the value of a debtor's assets; ensuring fair and equitable treatment of the claims against a debtor; protecting the public interest; and, in the context of a commercial insolvency, balancing the costs and benefits of restructuring or liquidating the company. Further, the discretion under s. 11 must also be exercised in furtherance of three baseline considerations: (a) that the order sought is appropriate in the circumstances, and (b) that the applicant has been acting in good faith and (c) with due diligence.
> [emphasis added]

Harte Gold, para 32.

89. The SCC also noted in *Callidus* that:

> [..] the CCAA is fundamentally insolvency legislation, and thus it also "has the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by the firm's financial distress . . . and enhancement of the credit system generally" […]
> [emphasis added, citation omitted]

Callidus, para 42.

90. Similarly, this Court has also confirmed that it must exercise its discretion with a view to the statutory objectives and purposes of insolvency legislation.

Quest University Canada (Re), 2020 BCSC 1883, para 154 [_Quest_].

91. As noted in *Quest*, there is no provision in the CCAA that prohibits an RVO. Similarly, the BIA [and the LEA] is silent with respect to RVOs. Therefore, as in *Quest*, this Court can exercise the discretion conferred upon it by the governing insolvency legislation, which, in this case, is the broad liberal mandate provided for in the BIA.

92. Accordingly, it is paramount that when considering the *Harte Gold* factors in determining the appropriateness of the RVO, this Court should also take into consideration the practicality of the Agreement and the RVO as well as the broad, liberal and overall remedial objectives of insolvency legislation in Canada, including the BIA. In these circumstances, the broader good resulting from the approval of the Agreement and the RVO outweighs the specific individual prejudice to opposing parties.

ii. The RVO is Necessary

93. The RVO is necessary to allow Cui Holdings to restart the Business in the near term and in an economically-viable manner while retaining its most valuable assets, the Licenses, but without inheriting the crippling costs of the Bill 13 Contracts and the related rate disputes. The Bill 13 Contracts will impose on the Business greater log harvesting costs than current prevailing market rates. The Bill 13 Contracts would also bring along the ongoing, expensive and unresolved rate disputes.

94. Timber Baron and Terrace Timber both argue that losing the Bill 13 Contracts will represent a significant financial loss. Using the "Bill 28 Valuation", Timber Baron estimates the value of its Bill 13 Contract to be $1.5 million along with $300,000 "for the Road Building Operation." Terrace Timber values its Bill 13 Contract at about $3 million.

Timber Baron Application Response, Part 4, para. 17;
Terrace Timber Application Response, para. 31.

95. Three important points can be made based on the evidence on this application. First, none of the *en bloc* bids submitted to the Receiver include assuming the Bill 13 Contracts. This means the market, in a receivership or a bankruptcy, will also not likely be willing to purchase the Licenses with the Bill 13 Contracts. Second, the one party who bid to purchase the TFL 41 License (Terrace Timber) proposed a purchase price that had an effective value of "nil" "after deducting the non-assumed liabilities". In other words, even Terrace Timber did not value its Bill 13 Contract for an amount equivalent to its claimed loss of that Bill 13 Contract. Third, Terrace Timber and Timber Baron have not provided Sawmills with log harvesting since May 2023 and July 2022, respectively. Both continue in business. Neither have liquidated equipment or terminated employees in that period.

Receiver's Supplemental Report dated March 6, 2024, para. 3.3.

96. In any event, and as would be the case under the CCAA or in a bankruptcy of the Skeena Entities, Timber Baron and Terrace Timber will have unsecured debt claims against ResidualCo. Both Terrance Timber and Timber Baron will be in the same place whether the RVO is granted or the Skeena Entities are liquidated piecemeal by the Receiver. In a piecemeal liquidation, which may include a bankruptcy, the Business will not be preserved as a going concern and the sale of the Skeena Entities' assets are unlikely to maximize recovery. If saleable at all, the Licenses would in all probability be sold to a third party without the Bill 13 Contracts. That sale would be subject to a lengthy and uncertain consultation process. There is no certainty ministerial approval of a transfer would be granted. The Licenses may ultimately be unsaleable after a lengthy and uncertain ministerial and/or First Nations review and consultation process. In both scenarios (the RVO and a liquidation), the Bill 13 Contracts are lost, but in the latter case the value realized from any sale of the Licenses will be considerably less.

97. By retaining the Licenses and excluding the Bill 13 Contracts, an RVO preserves and maximizes the value of the Business. The preservation of a going concern is a factor courts have considered in determining whether to grant an RVO. As already noted, the alternative is the piecemeal liquidation of the Skeena Entities' assets and an uncertain future for the continued existence and saleablity of the Licenses to a third party. What is virtually certain is the disclaimer of the Bill 13 Contracts.

Harte Gold, para. 77.

98. Moreover, given the opposition of the Gitanyow Nation (as later articulated) to a transfer of A16882 to any independent third party, there is virtually no chance of the assets being sold *en bloc* to any party other than a Gitanyow entity. However, the Gitanyow Nation has not submitted a bid.

iii. The RVO Produces a Favourable Economic Result

99. Granting the RVO and ensuring that Sawmills is not burdened by the Bill 13 Contracts produces favourable economic results that extend beyond the economic viability of the Business.

100. Cui Holdings is investing in the Agreement with a view to returning the Business to a fully operational status. Once operating, it is expected that the Business will employ approximately 150 individuals, as it had in the past, and purchase products and services from over 200 business, many of which are located in Terrace or the surrounding areas.

101. The probability of this future employment and the purchase of products and services overwhelms the prospect of the employees of Timber Baron and Terrace Timber losing their employment. Terrace Timber "employs 15 hourly USW employees". Timber Baron "employs 15-20 hourly employees". There is no evidence these employees are not still employed by Timber Baron and Terrace Timber.

Timber Baron Application Response, Part 4, para. 11;
Terrace Timber Application Response, para. 34.

102. In a balancing of interests, Timber Baron and Terrace Timber neglect to consider the economic benefit of the Agreement and the continued operation of the Business to a larger group of people and businesses in the "local Terrace community". The Business will also be paying municipal and other taxes.

103. Further, the Bill 13 Contracts have not provided employment for Timber Baron since 2022 or Terrace Timber since early to mid-2023. Both are still in business. Indeed, Timber Baron appears to have a robust business and is involved in many other projects and industries. Terrace Timber had the financial wherewithal to submit a bid to the Receiver. The spectre of either enterprise being put out of business or forced to "liquidate its equipment" is an overstatement of the consequences to them of the Agreement and RVO.

104. Further, if the RVO is not granted, it is probable the Skeena Entities assets will be liquidated piecemeal, either with or without the cancellation of one or more of the Licenses by the Province. In either case, the Bill 13 Contracts will be lost. In this scenario, Timber Baron, Terrace Timber and their employees are going to be in the same position as they will be if the Agreement is approved.

105. A piecemeal liquidation will put other stakeholders in a worse position. For example, unlike with the Agreement, in a liquidation the equipment lessors will need to reclaim their equipment, may not get paid in full or will have the Receiver selling that equipment, all at greater cost to the receivership with a corresponding lower net realization.

iv. No Stakeholders are Worse-Off under the RVO than the Alternatives

Stakeholders Generally

106. As previously noted, no other *en bloc* offer submitted to the Receiver included retaining the Bill 13 Contracts. If the Agreement is not approved and the RVO is not granted, then, in all probability, the Business will be liquidated and cease operating. Any liquidation of the Licenses will likely see the purchaser disclaiming the Bill 13 Contracts, or, alternatively, the Licenses will not be capable of sale because of the Bill 13 Contracts and will be lost entirely.

107. Under the Agreement, Cui Holdings will pay the Receiver approximately $4.5 million to repay claims against the Skeena Entities ranking in priority to the claims of the Lender. The Receiver summarized the payment estimate as follows:

Skeena Entities
Offer from Cui Holdings - Payment Estimate
CADS'000

Components		**$**
Credit bid		
Promissory Notes		
- Principal	$ 7,494	
- Interest (up to April 19, 2024)	507	$ 8,000
Receiver's Certificates		
- Principal as at March 11, 2024	500	
- Interest (up to April 19, 2024)	27	
- Forecast advances to closing	400	
- Forecast interest for additional advances (up to April 19, 2024)	5	931
Total Credit bid amount		$ 8,931
Priority claims - estimate		
- Property taxes	1,800	
- Stumpage	1,177	
- Source deduction remittances	82	
- Equipment leases - Sawmills (exclude Canter Line)	961	
- Equipment leases - Bioenergy	79	4,098
Work-in-progress inventory (Sawmills)		400
Fees to bankrupt ResidualCo.		30
Total Payment Estimate		**$ 13,460**

Receiver's Supplemental Report to the 4th Report, para. 2.1

108. Cui Holdings will also be investing approximately a further $26 million in capital improvements for the Business. This investment will benefit the local economy and create employment in the Business for approximately 150 people.

Wu #1, paras. 18 and 28.

109. In *PaySlate#1*, the mischief that the court considered when refusing to grant an RVO occurred in a CCAA proceeding where the creditors' ability to vote on a plan was bypassed.

***PaySlate #1*, para. 99.**

110. No such mischief exists in this receivership. Unlike the CCAA or a BIA proposal, there is no statutorily mandated process to gauge or seek creditor approval in a receivership. Receivers frequently disclaim contracts with a particular creditor and sell assets that are valuable without having to undergo a creditor approval process. This has previously been done with Bill 13 contracts in a receivership.

***New Skeena*, para 14.**

111. In a receivership, the forum in which to gauge creditor approval (or disapproval) is the court proceedings establishing the sales process and seeking approval of any resulting sale. The various creditors of the Skeena Entities are not, as Timber Baron and Terrace Timber argue, being deprived of a voice or process they would otherwise benefit from in a receivership. Instead, as is normal in a receivership, they are voicing their opposition and the equity of their position as part of the sale approval application. As part of the equitable circumstances being considered, the Court will take into account the positions of Timber Baron and Terrace Timber.

112. In *Quest*, the court approved an RVO that was used to avoid a vote under the CCAA by a problematic creditor. That discordant dynamic does not exist here. In this receivership, the objecting creditors are not entitled a formal vote on the sale of assets by the Receiver. Rather, as is standard practice, the opposing parties have an opportunity to adduce relevant evidence and the right to voice their opposition in a formal court setting. They are doing so.

113. Further, none of the parties to this receivership suggested that the sales process undertaken by the Receiver has been unfair. The complaint by some parties is that the proposed RVO circumvents a creditor vote that would occur under the CCAA or BIA. With respect, this ignores the evolution of restructurings under the CCAA and BIA where "liquidating" CCAAs or "liquidating" NOIs are prevalent. In these scenarios, the court will often approve a sale to preserve the value of a business as a going concern. In these circumstances, the court considers a variety of factors, similar to those in the present circumstances and including, among others, those set out in s. 36(3) of the CCAA, which, as noted in *Quest*, does not require creditor approval of a sale.

***Quest*, paras. 168 - 171.**

114. The mechanism of an RVO is not the problematic aspect of the remedy for courts, nor is it the gravamen of the concern about RVOs articulated by commentators. Rather, the concern is with the application of that mechanism in extraordinary circumstances. Specifically, courts and commentators have expressed concern about the use of an RVO in circumstances that require the release of liabilities without a plan approved under the CCAA, which has the potential to negate the creditor's right to meaningfully vote on a CCAA plan. It is this application that makes the use of an RVO extraordinary – not the mechanism of the RVO itself.

115. The Receiver conducted a fair and reasonable sales process which resulted in a recommendation that the Agreement and the RVO be approved by the court. No viable alternative to the *en bloc* sale of the Skeena Entities assets has emerged. No party suggests a piecemeal liquidation of the Skeena Entities will achieve better financial outcomes than the proposed *en bloc* sale of the Agreement. Rather, the opponents focus almost entirely on the adverse consequences of the Agreement to themselves specifically. Those consequences are likely to occur whether or not the Agreement is approved.

116. The court must balance these equities in considering whether to approve the Agreement and grant the RVO. Not every stakeholder will be happy with the outcome and many will suffer financial loss. The only probable alternative to the Agreement is a piecemeal liquidation in which these stakeholders and others will suffer an identical or worse financial outcome. None of them will suffer any greater prejudice if the Agreement proceeds. In fact, many stakeholders, such as the secured creditors, the Business employees and local suppliers, will be better off as a result of the Agreement.

The Province

117. The Province argues that it will be worse off if the RVO is granted, as a result of there being a "disposition" of the Licenses without Ministry of Forests approval or consultation. The Province asserts that this outcome defeats the intentions of the legislature. Notwithstanding these concerns, the RVO should still be approved for reasons similar to those in *Peakhill*, where an RVO was granted despite an argument from the Province that it would be worse off and that provincial tax legislation was being avoided.

***Peakhill*, para. 77.**

118. As articulated earlier, the RVO is not a disposition of the Licenses that would trigger the requirement for Ministry of Forests approval under the *Forest Act* or the Regulations. The Licenses will remain with Sawmills. Provincial legislation is not "usurped" or defeated. Sawmills will continue paying stumpage for harvested logs.

119. One purpose of this RVO is that it creates an "alternative arrangement" in which the value of the Licenses can be preserved for continuing use by the Business without imposing statutorily created liabilities and obligations.

Peakhill, para. 66.

120. Similarly, as noted in *Peakhill*, the Province has the legislative ability to impose the requirements of the *Forest Act*, including in relation to the Bill 13 Contracts, on any Licenses being dealt with in a receivership or other insolvency proceeding by way of an RVO. The Province has not done this.

Peakhill, paras. 66-69.

The Gitanyow Nation, Kitsumkalum First Nation and Haisla Nation

121. As part of weighing the relative equities, this Court should consider the interests of parties, such as the Gitanyow, Kitsumkalum and Haisla First Nations, who oppose the RVO. As was noted in *Harte Gold*:

> [35] It is worthy of note that, in both *Nemaska* and *Quest*, the *bona fides* of the objectors were front and centre in the judicial analysis and, in both cases, the motivations and objectives of the objectors were found suspect and inadequate.

Harte Gold, para 35, citing _Southern Star Developments Ltd. v. Quest University Canada_, 2020 BCCA 364; and _Arrangement relatif à Nemaska Lithium Inc_, 2020 QCCS 3218.

122. The First Nations noted above have motivations and objectives that are not directly related to their interest in this receivership. All the First Nations object to the RVO on the grounds that it "eliminates the required consultation with affected First Nations". All assert a "very strong claim of Aboriginal title", including "timber in our Territory [that] cannot be harvested without our consent."

Haisla Nation Application Response, para.5;
Kitsumkalum Application Response, Part 5, para. 19;
Starlund #1, para. 10.

123. The First Nations conflate the right to consultation with the Ministry of Forests when a license is transferred and the objects and scope of a receivership. The "obligation to consult" is owed by the government, not a private business. In the context of the *Forest Act*, it is only triggered, as the Province notes, where there is a "transfer" or "disposition" of a Forest License. The party that owes the obligation to consult with First Nations when a Forest License is transferred is the Ministry of Forests, not the license holder.

124. Despite their position otherwise, each of the First Nations concede this point. The Gitanyow Nation describes it as:

> The Forest Act mandates the minister to consider the effects of a disposition on the marketing of fiber in British Columbia and the public interest.

The Haisla Nation concede it is "an obligation of the Province to consult with us". The Kitsumkalum First Nation says the RVO "avoid[s] triggering the Province's requirement around the disposition of various forest tenures and licenses, including the Tree Farm License 41 and Forest License A16885, under the *Forest Act*, and eliminates the required consultation with affected First Nations."

Starlund #1, Ex. C.;
Newton-Mason #1, Ex. A.;
Kitsumkalum Application Response, Part 4, para. 2.

125. Further, one of the primary objectives of a receivership is the "fair and equitable treatment of the claims against a debtor". The "duty to consult" under the *Forest Act* is not a "claim against a debtor". At best, it is a claim against the Province if the debtor transfers a Forest License.

***Harte Gold*, para. 32.**

126. The Gitanyow Nation goes further and takes the positon that it is "ready to contest any attempts to transfer FLA16882 to a non-Gitanyow entity". This position amounts to a unilateral assertion of veto rights over the broad and overarching remedial objectives of federal insolvency legislation, including receiverships. This is a purported right that the Gitanyow Nation do not have in any type of insolvency proceeding.

Gitanyow Nation Application Response, para. 20;
Starlund #1, para. 13, Exs. C and E.

127. In taking this position, the Gitanyow Nation is attempting to thwart the Court's authority under the BIA and defeat the purpose of insolvency proceedings such as this receivership.

128. If the Court accepts the position of the First Nations generally, or the Gitanyow Nation specifically, it will put the entirety of the law respecting private property rights and Canada's insolvency regime into a state of flux and uncertainty where they may indirectly affect the interests of First Nations.

v. The Consideration Paid Reflects Value

129. The Licenses represent the most valuable assets of the Business. In *Harte Gold*, the court noted that while "it is true that no attempt has been made to put an independent value on the transfer of the license and permits" the results of the sales process established "that no one else among the universe of potential purchasers […] was willing to pay more" than the credit bidder.

In the present case, there is evidence of the independent value of at least TFL 41. An entity related to Terrace Timber submitted a bid for TFL41 that the Receiver assessed as "the purchase price after deducting the non-assumed liabilities was effectively nil."

***Harte Gold*, para. 68;**
Receiver's Supplemental Report to the 4th Report, para. 3.3.

130. The Agreement before this Court contains sufficient consideration and was the result of a lengthy sales-process overseen by the Receiver as this Court's officer. The Receiver has brought the Agreement for court approval. The Agreement represents fair market value for the *en bloc* sale of the Skeena Entities assets. No viable alternative has emerged despite this five month sales process.

C. Conclusion

131. This Court has the jurisdiction to approve the Agreement and grant the RVO. After considering the *Harte Gold* factors, it is clear this is a situation in which an RVO should be granted.

132. The following summary of equitable factors favour the approval of the Agreement and the granting of the RVO:

(a) the RVO allows for Sawmills' most lucrative assets, the Licenses, to be maintained for continuing use in the Business as a going concern;

(b) priority claims will be paid in full;

(c) the Bill 13 Contractors will likely end up in the same position in the event of a piecemeal liquidation of the Skeena Entities;

(d) a piecemeal liquidation may see the loss of the Licenses entirely;

(e) all other *en bloc* offers submitted to the Receiver contemplate vesting off the Bill 13 Contracts;

(f) the Receiver supports the Agreement and the RVO;

(g) Sawmills will continue in business and provide employment of up to 150 people and support over 200 local businesses;

(h) the Business will continue to pay stumpage fees, municipal and other taxes;

(i) all stakeholders are treated as advantageously and as fairly as these circumstances allow;

(j) stakeholders such as Sawmills' employees and suppliers, the City of Terrace and secured creditors will be paid;

(k) the Bill 13 Contractors have had the opportunity to participate and make their own offers;

(l) the unresolved rate disputes with the Bill 13 Contractors create financial and business risk and uncertainty to the ability of the Business to re-start and operate viably;

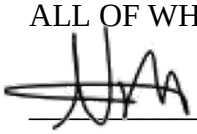
(m) the Agreement comes after five months of complex bidding and negotiation among many parties;

(n) no stakeholder criticizes the sales process itself; and

(o) the sale process was reasonable and all parties had access to professional advice, including the Bill 13 Contractors;

For all these reasons, this Court should approve the Agreement and grant the requested RVO.

ALL OF WHICH IS RESPECTFULLY SUBMITTED MARCH 27, 2024



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V. LIST OF AUTHORITIES

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2. *Arrangement relatif à Nemaska Lithium Inc,* 2020 QCCS 3218
3. *Brunswick Health Group Inc. (Re),* 2023 QCCS 4643
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10. *Kingsway General Insurance Company v. Residential Warranty Company of Canada Inc. (Trustee of),* 2006 ABCA 293
11. *New Skeena Forest Products Inc., Re v. Don Hull & Sons Contracting Ltd.*, 2005 BCCA 154
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15. *Quest University Canada (Re),* 2020 BCSC 1883
16. *Sam Lévy & Associés Inc. v. Azco Mining Inc.*, 2001 SCC 92
17. *Southern Star Developments Ltd. v. Quest University Canada*, 2020 BCCA 364
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1. Janis Sarra, *Reverse Vesting Orders – Developing Principles and Guardrails to Inform Judicial Decisions*, 2022 CanLII Docs 431