

CANADA / JUDGMENT

Teal-Jones Group (Re)

2025 BCSC 861

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Supreme Court of British Columbia

DECIDED

8 May 2025

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2025 BCSC 861 Teal-Jones Group (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Teal-Jones Group (Re),

2025 BCSC 861

Date: 20250508

Docket: S242700

Registry: Vancouver

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985,

c. C-36, as amended

- and -

In the Matter of a Plan of Compromise and Arrangement of Teal-Jones Group and others entities listed in Schedule "A" to the Petition

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment

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Place and Date of Hearing:

Vancouver, B.C.

April 4, 2025

Place and Date of Decision with Written Reasons to Follow:

Vancouver, B.C.

April 4, 2025

Place and Date of Written Reasons:

Vancouver, B.C.

May 8, 2025

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INTRODUCTION

- [1] The petitioners are a group of companies--known as the Teal-Jones Group--who produce forest products. They have substantial operations in BC and five U.S. states. Teal-Jones Group includes Teal Jones Holdings Ltd. and 14 subsidiary companies (collectively, the "Group").
- [2] On April 25, 2024, the petitioners were granted creditor protection pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 [CCAA]. At that time, PricewaterhouseCoopers Inc. was appointed as the monitor (the "Former Monitor").
- [3] Early in these proceedings, on May 10, 2024, the Group sought and obtained an order allowing the Former Monitor to engage in a sales and investment solicitation process (the "SISP") to market various assets held by the Group. One of the assets included in the SISP was "Parcel 9", being Forest Licence A19201 (the "Licence") held by one of the petitioners, Teal Cedar Products Ltd. ("Teal Cedar").
- [4] On November 5, 2024, this Court appointed Ernst & Young Inc. as monitor of the petitioners (the "Monitor") in place of the Former Monitor.
- [5] To date, this Court has approved sales of many of the Group's assets. Presently, the Group is preparing other sale approval applications to be brought forward to the Court as soon as possible.
- [6] On this application, the Group seeks approval of certain transactions in relation to the Licence and an order allowing for the distribution of the sale proceeds that will arise from those transactions. The application is supported by the direct stakeholders who have a substantial financial interest in the proceedings. The application is also supported by other stakeholders who have a financial interest in the outcome of these proceedings more generally and, finally, the Monitor. The application is opposed by certain First Nations groups.

- [7] On April 4, 2025, I granted the orders sought by the Group, with written reasons to follow. These are those reasons.

BACKGROUND FACTS

The License

- [8] The Licence is a replaceable forest licence located in the Fraser Valley and Pitt Lake regions. It allows for an allowable annual cut of approximately 314,380 cubic meters.
- [9] In June 2023, even before the CCAA filing, the Group suspended log harvesting operations under the Licence, since it was able to source logs elsewhere. Nevertheless, the significant holding costs of the Licence have continued, at approximately \$1.1 million per annum.
- [10] Any transfer of the Licence by Teal Cedar is subject to approval by the Minister of Forests (the "Minister") under the Forest Act, R.S.B.C. 1996, c. 157.

Efforts under the SISP

- [11] In accordance with the order authorizing the SISP, the Former Monitor contacted 464 parties in the forestry and real estate industries across Canada, the U.S. and internationally. As a result, 84 parties signed non-disclosure agreements ("NDAs") and 70 bidders requested further information and received confidential information memorandums in relation to all of the Parcels included in the SISP, including Parcel 9.
- [12] Parcel 9 was marketed separately in the SISP and one section in the data room related specifically to the Licence and was available for review by interested parties.
- [13] The Former Monitor held discussions with various potential purchasers in the forestry market concerning the Licence. By the end of the original SISP timelines for receipt of final bids (in September 2024), the Former Monitor had received four non-binding letters of intent ("LOIs") for the Licence; however, three of those offers were withdrawn after the deadlines, and the fourth offer was rejected by the Group and its major secured creditors.
- [14] Accordingly, after extensive marketing of Parcel 9 by the Former Monitor for many months, no satisfactory bids had been received.
- [15] After its appointment on November 5, 2024, the Monitor continued the sale efforts under the SISP. This included the Monitor reaching out to a wide range of potential purchasers in respect of their due diligence and development of offers for the Licence.
- [16] Despite the Monitor's continuing efforts to arrange a transaction relating to the Licence, it had not received any further offers for the Licence that was satisfactory to the Group, the Monitor and the secured lenders.

[17] In mid-January 2025, the Monitor and the Group were contacted by Western Canadian Timber Products Ltd. ("WCTP") in relation to the Licence with proposed business terms. WCTP was previously involved in the SISP via an expression of interest received by the Former Monitor and had conducted significant due diligence during and after the SISP timelines. Weeks later, WCTP's approach would later bear fruit when the Group and the Monitor agreed to certain business terms of a transaction, which led to the form of the transaction now presented for the Court's approval.

Structure of the WCTP Transactions

[18] The proposed transaction is set out in a Tenure Management and Purchase Agreement dated March 18, 2025, between Teal Cedar and WCTP, as amended on March 31, 2025 (the "TMPA"). The proposed transactions includes a management contract for the Licence.

[19] The key elements of the TMPA are:

- a) "Non-Tenure Assets" include personal property, fixtures, improvements, private lands, permits and work in progress;
- b) "Tenure Assets" include the Licence, road permits, cutting permits, timber marks, operational plans, and other related authorizations;
- c) The total purchase price is \$14 million; and
- d) WCTP paid a 10% deposit to the Monitor following the execution of the TMPA, which becomes non-refundable upon court approval;

[20] The TMPA outlines a two-stage transaction:

- a) In the first stage:
 - i. WCTP will acquire the Non-Tenure Assets on closing, which is to occur on or before April 25, 2025 (the "Non-Tenure Asset Closing");
 - ii. WCTP and Teal Cedar will enter into a management agreement (the "Management Agreement") granting WCTP interim rights to operate and harvest logs under the Licence. The Management Agreement provides that WCTP assumes full responsibility for the operational, financial, and regulatory management of the Licence, including all liabilities associated with the assets, including environmental and forestry liabilities. The Group describes that this provision will maintain operational continuity and preserve the value of the Tenure Assets pending a later closing of those assets (the "Tenure Asset Closing");
 - iii. WCTP's management of the Tenure Assets under the Management Agreement is effective to the earlier of 25 years, the termination, expiration or cancellation of the Licence, or until the Tenure Asset Closing;

- iv. The full purchase price of \$14 million will be paid on closing. The purchase price is non-refundable, even if the Tenure Asset Closing does not occur or the Management Agreement is terminated;
 - v. The TMPA includes a "First Right Log Sales Agreement", by which WCTP grants the Group the first right of refusal each logging season to purchase specified volumes of logs; and
 - vi. The closing of the Non-Tenure Assets is subject to the granting of an approval and vesting order (as sought here) and the execution of both the Management Agreement and the First Right Log Sales Agreement; and
- b) In the second stage:
- i. WCTP will seek the necessary governmental approvals for the purchase of the Tenure Assets; and
 - ii. WCTP will support the fulfillment of the duty of the BC Government (the "Province") to consult with affected First Nations, with the goal of ultimately acquiring the Licence.
- [21] The conditions for the Tenure Asset Closing--set to be within ten days after receipt of the necessary approvals--include:
- a) the completion of the Non-Tenure Asset Closing;
 - b) the Minister has provided written approval to the disposition of the Licence as required under s. 54(2)(a) of the Forest Act;
 - c) the Province's Revenue Minister will have provided written approval of a Transfer Arrangement as contemplated in s. 54(2)(b)(iv) of the Forest Act; and
 - d) WCTP and Domtar Inc. ("Domtar") will have entered into an agreement for the sale of pulp logs produced under the Licence from WCTP to Domtar that is substantially similar to the terms and conditions of the present pulp log supply agreement between the Group and Domtar (the "New Domtar Agreement"). Prior to the CCAA filing, Domtar relied on its contractual rights with Teal Cedar to supply its Crofton Mill, which is suffering significant damage as a result of the Group's curtailment of supply under the Licence from June 2023.
- [22] The Group and the Monitor stress that:
- a) The TMPA is clear that, during the second stage leading to the Tenure Asset Closing, no transfer of the Licence can be effected unless and until the Province complies with its statutory duty to consult with the 39 affected First Nations;
 - b) Until the closing of the Tenure Asset Closing, Teal Cedar remains the licensee under the License with all accompanying rights and obligations that arise under the License; and

- c) Notwithstanding the granting of the approval and vesting order sought, WCTP's purchase of the Tenure Assets (including the Licence) will remain subject to all applicable consultations rights of the affected First Nations.
- [23] The Group's counsel asserts that WCTP and its principal, Brian Dorman, possess the necessary infrastructure and know-how to maximize the value of the Licence.
- [24] WCTP's infrastructure includes necessary equipment, capacity, and access to two dry land sorts in the Fraser Valley region, which provide access to scaling, booming and delivering timber by water to the sawmill at the Group's facility in Surrey. Specifically:
 - a) WCTP has access to scaling and booming via dry land sorts, which substantially assist with delivery of logs to the Group's mill in Surrey;
 - b) There are a limited number of dry land sorts in the Lower Fraser Valley area, and the two dry land sorts operated by WCTP are strategically located with proper access to the Group's mill in Surrey;
 - c) WCTP holds forest licence A20542, which relates to properties adjacent to those affected by the Licence. The Group says this creates synergies with the Licence. The Group also says that the First Right Log Sales Agreement ensures a steady supply of logs to the Group from both WCTP's licence and the License, which will maintain continuous operations at the Group's mill, and ensure its ongoing viability and productivity;
 - d) WCTP has established relationships with many of the First Nation Bands whose territories overlap with the Licence;
 - e) WCTP has agreed to essentially assume the Group's obligations to Domtar, under the New Domtar Agreement, which the Group describes as critical for the operations and the restructuring efforts of the Group; and
 - f) WCTP will also assume approximately \$3.1 million in liabilities (environmental, silviculture, market logging agreement, and replaceable road construction), which assumption also provides the estate with substantial value and reduces the financial burden on the Group during the second stage under the TMPA.

THE FIRST NATIONS

- [25] The Nlaka'pamux are First Nations people of the Interior Salish language group, which operates through the Nlaka'pamux Nation Tribal Council (the "Council"). The mandate of the Council is to protect and advance the title and rights of the Nlaka'pamux Nation (member communities include the Lytton First Nation, Oregon Jack Creek Band, Boothroyd Band and Skuppah Band).
- [26] Katzie First Nation ("Katzie") is a First Nation whose traditional territory includes Pitt Meadows, Maple Ridge, Surrey, Langley, Delta and surrounding areas.

- [27] Peters First Nation is a First Nation whose traditional territory intends north up the Fraser Canyon and includes Abbotsford, Chilliwack, Hope and Mission. The First Nation has a development arm, being PFN 3 Feathers Development Limited Partnership (collectively with Peters First Nation, "Peters").
- [28] The Council, Katzie and Peters are collectively referred to as the "Interested Nations".
- [29] The Interested Nations' traditional territories comprise a significant portion of the lands covered under the License.

Involvement of the Interested Nations

- [30] The Interested Nations have not actively participated in the CCAA proceedings; however, they have all been aware of the opportunity to purchase the Licence for a significant period. Katzie was involved even before the CCAA proceedings began and the Council and Peters became involved as a result of the SISP.
- [31] On August 3, 2023, Katzie expressed an interest in purchasing a portion of the Licence to support a proposed Allowable Annual Cut ("AAC"). In late September 2023, the Group began having weekly discussions with Katzie members to finalize the details of the potential sale, including the AAC. In early 2024, Katzie's consultants conducted a timber supply review, which was further reviewed by the Group's consultants.
- [32] On May 29, 2024, Katzie representatives and federal and provincial government treaty negotiating teams conducted a field tour of the Licence portion; however, no firm offers materialized for the Licence after the visit.
- [33] In June 2024, after the initiation of the SISP, Peters learned of the opportunity to purchase the Licence.
- [34] As early as July 2024, the Council learned of the process under the SISP. They signed an NDA shortly thereafter.
- [35] In late July 2024, both Peters and Katzie submitted non-binding LOIs to acquire a portion of the Licence.
- [36] On September 27, 2024, Peters submitted two qualified purchase bids in respect of purchasing volume under the Licence and they paid a deposit to the Former Monitor. The Former Monitor did not accept the bid.
- [37] On November 14, 2024, Peters' counsel contacted the Monitor's counsel, seeking to discuss the status of its bid.

- [38] On December 18, 2024, after evaluating the status of each Parcel in the SISP, the Monitor's counsel informed Peters that their bid was rejected and requested instructions for returning the deposit. In rejecting Peters' bid, the Monitor independently observed multiple expressions of interest that had been submitted for Parcel 9/the License. One of the expressions of interest for Parcel 9 proposed materially higher consideration than the Peters' offer.
- [39] In rejecting Peters' bid, the Monitor expressed hope that Peters would remain interested and submit a higher bid or collaborate with other interested parties to create an acceptable offer, which Peters' counsel would require the Monitor releasing Peters from the NDA requirements. The Monitor's counsel replied that they would provide a list of parties subject to NDA requirements.
- [40] On January 14, 2025, WCTP submitted an offer to the Monitor, which was identified by the Monitor as meeting a number of the Group's strategic objectives.
- [41] On January 22, 2025, Peters' counsel requested the deposit be returned to their trust account, which was completed within a few days. On January 28, 2025, Peters' counsel also requested the list of parties subject to NDAs.
- [42] There is no dispute that the Monitor was able to reject Peters' bid or offer (or any other offer or bid) for the Licence under the terms the SISP (para. 44), given the reservation of rights to refuse to enter into any definitive agreement.
- [43] On January 24, 2025, Katzie requested a meeting with the Group. On January 28, 2025, that meeting took place. Following this meeting, Katzie provided high-level terms for a potential bid for certain assets, including a portion of the Licence.
- [44] On January 27, 2025, in its Ninth Report, the Monitor indicated that it was initiating a remarketing process in respect of the Parcels in the SISP that remained, including Parcel 9.
- [45] On January 28, 2025, Peters' counsel requested a list of those parties subject to the NDAs to whom Peters might speak about a joint offer. However, by that date, the negotiations between the Monitor and WCTP had progressed to the point that they had agreed upon the business terms, which would ultimately lead to the execution of the TMPA. In those circumstances, the Monitor considered, reasonably in my view, that it was not appropriate to further engage with Peters until the TMPA had been executed and the application served.
- [46] On February 11, 2025, the Group responded to Katzie's potential offer with modified terms, including reduced AAC levels. Katzie acknowledged receipt of the letter, but did not respond further.
- [47] On March 18, 2025, this application was filed.

- [48] Also on March 18, 2025, in light of the emails sent by Peters' counsel enquiring as to the status of the proposed sale, once the application was served, the Monitor's counsel attempted to speak with Peters' counsel and left them a voicemail message.
- [49] On March 19, 2025, a day after filing the present application, the Group sent a courtesy letter to all 39 First Nations (regardless of whether they were listed on the Service List) to inform them of the application. In particular, given the importance the Group and WCTP place on their partnership with Katzie, the Group's representative personally contacted Katzie's counsellor in order to inform them of the application and the relief being sought, and explain the nature of the courtesy letter and how the transaction is structured.
- [50] At no time has the Council presented any offer to the Monitor in relation to the License. Only upon receiving the application did the Council take any steps to "begin" preparing an offer, which offer apparently has yet to be prepared.

Duty to Consult

- [51] The duty to consult First Nations in Canada, including the Interested Nations in relation to the transfer of the Licence under the TMPA, is uncontroversial.
- [52] In *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, these consultation rights were expressly recognized in relation to transactions relating to a tree farm licence issued under the Forest Act.
- [53] Recently, in *Teal Cedar Products Ltd. v. British Columbia*, 2025 BCSC 595, Justice Brown discussed the relationship between forestry tenure agreements and the Crown's constitutional duties to First Nations.
- [54] The Group, WCTP and the Monitor are well-attuned to the constitutional rights and protections afforded to the Interested Nations (and the other 36 First Nations groups) regarding the transfer of the License. In addition, they agree that these consultative rights and protections must be considered in connection with any application to the Minister to approve a transfer of the License.
- [55] As I will discuss below, the contest here between the Group and the Interested Nations is whether those rights and protections have yet to be triggered in relation to the WCTP agreements sought to be approved here.

DISCUSSION

- [56] ¶The issues raised on this application are:
- Is the approval of the Minister under the Forest Act required for these transactions?
 - If not, was the sales process conducted in a fair and reasonable manner?
 - If the sales process was fair and reasonable, is it appropriate to approve the transactions?

A. Is Ministerial Approval Required under the Forest Act?

[57] The Interested Nations accept that the License, and the rights and obligations attached to it, can be transferred in certain circumstances. However, the Interested Nations take the position that this Court should not approve the TMPA because the proposed transaction and, in particular, the Management Agreement, constitutes a "disposition" of the Group's interest in the Licence which, under the Forest Act, requires the Minister's approval.

[58] The Group, the Monitor and the stakeholders appearing on this application disagree that these transactions require the Minister's approval.

[59] Section 12(a) of the Forest Act provides that the Minister, on behalf of the Province, may enter into an "agreement" in the form of a forest licence (which, under s. 14 allows the holder to harvest Crown timber). An "agreement" includes an agreement in the form of a licence, such as the Licence (s. 53(1)).

[60] Part 4, Division 2 of the Forest Act addresses dispositions of agreements. As relevant here, s. 54(1) and (2) set out in what circumstances dispositions of agreements will be permitted. The relevant portions of s. 54(1) and (2) are:

54 (1) Subject to subsection (2) and to section 54.4, the holder of an agreement may dispose of the agreement to another person.

(2) A disposition of an agreement is without effect unless all of the following conditions have been met:

(a) the minister, in writing, approves the disposition;

(b) as of the end of the day of the completion of the disposition, all money

(i) required to be paid to the government under the circumstances set out in section 130 (1.1), and

(ii) due and payable to the government under that section

in respect of the agreement

(iii) has been paid, or

(iv) is the subject of an arrangement for payment approved by the revenue minister;

[Emphasis added.]

[61] Section 53(1) of the Forest Act defines "disposition" as follows:

"disposition", in relation to an agreement, includes a disposition of an interest in the agreement.

[62] Section 29 of the Interpretation Act, R.S.B.C. 1996, c 238 also defines "dispose" as follows:

"dispose" means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things;

[63] In addition, the Minister's "Forest Act Disposition of an Agreement Administrative Guide" issued on December 8, 2021 provides the Minister's views on what constitutes a "disposition". It states:

The [Forest Act] defines and uses the term "disposition" to indicate a change in the holding of an interest in an agreement or the holding of the rights under an agreement. The term disposition is further specified to refer to a transfer, corporate change of control, and amalgamations.

[64] The Interested Nations argue that the substance, not the form, of the TMPA provides for an immediate "disposition" of Teal Cedar's interest in the Licence that requires the Minister's approval.

[65] While I agree that the substance of the agreement is a key consideration, I disagree that the TMPA provides for an immediate "disposition" of the License, for the reasons articulated below.

[66] Firstly, I agree with the Group that the duty to consult First Nations has not yet arisen.

[67] In Haida Nation, the Court considered the question as to when the duty to consult arose. The Court stated:

[35] But, when precisely does a duty to consult arise? The foundation of the duty in the Crown's honour and the goal of reconciliation suggest that the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it: see Halfway River First Nation v. British Columbia (Ministry of Forests), 1997 CanLII 2719 (BC SC), at p. 71, per Dorgan J.

[Emphasis added.]

[68] Here, assuming that the Minister is aware of the potential existence of Aboriginal rights or title, it cannot be said that the contemplated actions of Teal Cedar and/or WCTP under the TMPA can be characterized as "conduct that might adversely affect" those potential rights or title. To the contrary, there is no effect, adverse or otherwise, to the Interested Nations until the start of the process to transfer of Tenure Assets, when the Minister will begin consultations as constitutionally required.

[69] The TMPA clearly recognizes the Minister's duty to consult First Nations as a precondition of any transfer of the License. The TMPA contemplates a transfer of the Licence from Teal Cedar to WCTP only upon the satisfaction of the conditions for the Tenure Asset Closing, which include the Minister's approval, including under s. 54(2)(a) of the Forest Act.

[70] WCTP's purchase of the Tenure Assets is also expressly subject to the Minister's duty to consult affected First Nations, as set out in Section 7.5 of the TMPA:

Notwithstanding Court Approval and the terms of the Approval Order, the purchase of the Tenure Assets and the Licence is subject to any consultation required with any Indian band, first nation or aboriginal group, house, tribal council or other indigenous organization, including regarding claims of aboriginal rights or title or interest or treaty rights, made by, or on behalf of, any such Indian band, first nation or aboriginal group, house, tribal council or other indigenous organization.

- [71] Moreover, the TMPA expressly provides that First Nations' rights will be preserved if the Licence is transferred. In Schedule C - Encumbrances, "Permitted Encumbrances" include "claims of aboriginal rights or title or interest or treaty rights" and also include "any duty or obligation to share information with, consult, or accommodate" any First Nation.
- [72] The Management Agreement does not prejudice or "adversely affect the right" because it only provides for management of the Tenure Assets; any transfer of them is subject to the requirement of consultation.
- [73] Secondly, while WCTP does agree to assume the liabilities associated with the Tenure Assets (Sections 2.4 and 7.8 of the TMPA), it does not detract from Teal Cedar's continuing liability in respect of the Licence until the Tenure Asset Closing. The Licence states at section 11.01 that:

The Licensee must indemnify the Province against and save it harmless from all claims, demands, suits, actions, causes of action, costs, expenses and losses faced, incurred or suffered by the Province as a result, directly or indirectly, of any act or omission of:

- (a) The Licensee;
- (b) an employee or agent of the Licensee;
- (c) a contractor of the Licensee who engages in any activity or carries out any operation under or associated with this Licence or a road permit; or
- (d) any other person who on behalf of or with the consent of the Licensee engages in any activity or carries out any operation under or associated with this Licence or a road permit

- [74] Teal Cedar will remain the licensee under the Licence following the Non-Tenure Assets Closing and at all times while the Management Agreement is in place. This will be the case until the Minister's duty to consult is satisfied, which again must take place prior to any approval of a transfer by the Minister under the Forest Act.
- [75] In addition, while WCTP acquires property in the deposit held by the Minister (Section 2.8 of the TMPA), this arrangement is subject to the Minister directing otherwise (which has not happened, as far as I am aware).
- [76] Thirdly, the Interested Nations argue that WCTP's management of the Licence under the Management Agreement is "effectively" a transfer of the License.

- [77] Paragraph 3.1 of the Management Agreement allows WCTP to exclusively manage the Licence and take timber from the License. Paragraph 5.1 of the Management Agreement provides that Teal Cedar grants all property it has in the timber to WCTP from the time of felling the trees and that WCTP may dispose of the timber as it wishes, including retaining any profits or suffering any losses from harvesting and sales of the timber.
- [78] The Interested Nations point specifically to para. 2.1 of the Management Agreement which provides that the term of the Management Agreement is the sooner of the Tenure Asset Closing, termination of the Licence or 25 years from the Non-Tenure Assets Closing. They argue that this is really nothing more than a "back-door" scheme to allow WCTP to operate under the Licence on a long term basis and to harvest timber without Ministerial approval.
- [79] However, allowing other persons to harvest timber under a licence does not contravene the Forest Act. Section s. 14((1)(g) of the Forest Act specifically provides that a licence may allow for the timber to be "harvested by persons under contract with its holder". In fact, the Licence specifically contemplates this scenario under Sections 6.00 and 11.01(c) and (d).
- [80] The Group argues that a private third-party agreement that does not affect a licensee's obligations under a licence is not a transfer or disposition of that licence.
- [81] In support, the Group cites Justice Armstrong's decision in *Pal Lumber Co. (2007) Ltd. v. British Columbia (Forests, Lands, Natural Resource Operations and Rural Development)*, 2022 BCSC 734 [Pal Lumber]. This case involved a judicial review of a refusal to approve the transfer of a timber sales licence from the licensee (Pal Lumber Co.) to a nominee of a company with whom the licensee had dealt with previously (Sigurdson).
- [82] Many years prior to the transfer application, the licensee in Pal Lumber had entered into an agreement with Sigurdson to transfer control of certain licences to Sigurdson, pursuant to an unconditional and unrestricted power of attorney (para. 11). Armstrong J. held that this type of agreement did not constitute a transfer of the licences, stating:
- [13] This private third-party agreement between Pal Lumber and Sigurdson did not affect Pal Lumber's obligations under the licenses, and granting the power of attorney did not constitute a transfer: Pal Lumber remained responsible for all obligations under the licenses.
- [83] I agree with the Group that the terms of the Management Agreement that allow WCTP to "manage" the Licence does not amount to a disposition of the Licence under the Forest Act. This is particularly so when considered in the context of the entire transaction, which expressly contemplates that Teal Cedar and WCTP will undertake steps to achieve just that-- a "disposition" or transfer--but with the parties' express acknowledgement of the Minister's duty to consult First Nations prior to any such disposition.

[84] Further, the Group's counsel advises that they have taken steps to assuage the Interested Nations' concerns that the proper consultation requirements will be undertaken in a timely fashion. Pursuant to the Amending Agreement, the TMPA was amended by the addition of Section 6.4 which provides that Teal Cedar and WCTP will use:

all commercially reasonable efforts to initiate the process for the Ministerial Approval and the Transfer Arrangement as soon as commercially feasible, and in any event no later than two (2) months from the date of the Non-Tenure Asset Closing.

[85] Fourthly and finally, there is the matter of the Minister's position in relation to these transactions and, in particular, whether the Minister considers that the substance of the TMPA usurps the role of the Minister.

[86] The Interested Nations argue that the failure to secure the Minister's approval prior to this Court's approval of the TMPA should be of "significant concern" to the Minister. That appears to be anything but the case.

[87] The Province was served with this application, along with the other parties on the Service List. After service, the Province's lawyers engaged with the Group's lawyers to request clarification on certain matters. In particular, the Province asked for and received confirmation from the Group that Teal Cedar remained fully liable under the Licence even after the Non-Tenure Asset Closing and until any Tenure Asset Closing. Further, at the request of the Province, para. 10 of the proposed order was added. This paragraph provides that:

Nothing in this Order exempts or relieves [WCTP] from obtaining any consents or approvals or giving any notice required under any enactment of [the Province] or under any agreement, licence, permit, approval, certificate or other instrument issued under the authority of an enactment of [the Province] in connection with any transfer or assignment of any of the Assets as contemplated in the [TMPA] or this Order or makes any of the Assets transferable or assignable if any such Asset is not, by virtue of an enactment of [the Province] or the Asset itself, transferable or assignable.

[88] Accordingly, although the Province has not taken any formal position on the application at this hearing, they have clearly considered the matter and reasonably requested clarification with respect to issues that concern the Province, including in relation to the License. The Province is not supporting the position of the Interested Nations as their arguments relate to the Minister and the provisions of the Forest Act.

[89] In conclusion, I disagree with the Interested Nations that approval of the TMPA and its related agreements amounts to an "end run" to avoid the undertaking of and completion of the Province's duty to consult them. Court approval of the TMPA at this time does not amount to Teal Cedar "blatantly circumvent[ing]" the protections afforded to the Interested Nations.

[90] In addition, these transactions do not undermine the Minister's statutory authority to approve any transfer or disposition of the Licence under the Forest Act. The effect of the TMPA is not to ignore or defeat the Minister's statutory duties and obligations under the Forest Act.

B. Was the SISP Conducted Fairly and Reasonably?

- [91] The appropriateness of the sales process are considered in relation to the well-known considerations identified in *Royal Bank v. Soundair Corp.* (1991), 4 O.R. (3d) 1 at 6 (C.A.), 1991 CanLII 2727 (ON CA). The "Soundair factors" include: (i) whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently; (ii) the interests of all parties; (iii) the efficacy and integrity of the process by which offers were obtained; and, (iv) whether there has been any unfairness in the sales process.
- [92] The Interested Nations take the position that the process leading to the presentation for approval of the proposed transaction was not fair and reasonable, particularly in light of the constitutional rights afforded to First Nations. Some of Peters' objections are that: they were not provided with any updates before the rejection of their bid; they were not released from their NDA to allow them to engage with other interested parties; and they were not advised about the WCTP sale before the application was served.
- [93] I disagree with the Interested Nations that they have had a lack of opportunity to compete to acquire the License, either before this application or after the March 2025 adjournment.
- [94] As outlined above, the Group and the Monitor have been particularly attuned to the interests of the Interested Nations, particularly in regard to the Licence.
- [95] The Interested Nations have been aware of the opportunity to purchase Parcel 9 of the SISP for many months. To the extent that any of them advanced bids, the Monitor responded in an appropriate manner under the terms of the SISP.
- [96] Notwithstanding the fact that some of the Interested Nations submitted bids in the SISP, the SISP clearly provides that the Monitor was under no obligation to enter into definitive agreements with any bidder, and that the SISP does not, and will not be interpreted to, create any contractual or other legal relationship between the Group, the Monitor and any party.
- [97] While I accept that the Monitor's Ninth Report--and its reference to re-activating the sales process--might have been somewhat confusing to Peters, the state of affairs changed quickly after that date (January 27, 2025). On the next day, January 28, 2025, the Group, the Monitor and WCTP advanced its proposal by agreeing to business terms. At that stage, the Monitor was not under any obligation to advise the Interested Nations of this development, let alone offer any of them a "right of first refusal". After receiving what appears to be a very opportune offer from WCTP, the Monitor was then rightly focused on completing the negotiations with WCTP to see if an acceptable transaction emerged, which it did of course, under the TMPA.

- [98] In addition, the Interested Nations all had ample time to negotiate an agreement that would be acceptable to the Group, the Monitor and the lenders who have continued to provide substantial interim financing for these proceedings (the "Interim Lenders").
- [99] There is no merit to the Interested Nations' complaint that the form of the transaction now proposed by WCTP was not also solicited from other potential buyers. In fact, it was open to the Interested Nations to formulate whatever form of transaction they wished to propose that might be considered by the stakeholders. No particular form of transaction was dictated by the SISP. As described by the Group's counsel, one of the advantages of the SISP process is its inherent flexibility, allowing parties to propose innovative solutions tailored to specific assets and circumstances.
- [100] The TMPA clearly embodies the flexibility that is inherent under the SISP, in proposing a transaction for the Tenure Assets that is unique in many respects, including that it allows the Group to quickly monetize the Licence and the related assets for the benefit of the Group and its stakeholders, while also preserving the Minister's approval process and the required consultation rights of First Nations.
- [101] The materials for the approval of the TMPA were served on March 18, 2025, providing ample notice for the later hearing date on March 25, 2025. In addition, around that date, the Interested Nations were personally contacted and they received the courtesy letter the next day.
- [102] This application--filed March 19, 2025--was originally scheduled to be heard on March 25, 2025. By that time, the Council and Katzie had voiced their disagreement to the proposed sale. At the request of the Council and Katzie's counsel, the matter was adjourned to today's date to allow them to file reply materials.
- [103] On March 28, 2025, representatives of the Group and the Monitor held a videoconference with the Council and Katzie to discuss their potential offer for the License. At that time, the Monitor emphasized certain aspects of the WCTP transactions that were critical to the Group, namely: a quick closing, a reputable party to assume the obligations under the Licence and that the purchase price was paid up front and was non-refundable even if the Minister did not approve the transfer of the License.
- [104] However, only on April 3, 2025, on the eve of this hearing, the Council and Katzie have put forward a letter seeking an adjournment on the basis of their stated intention to put forward a formal offer. That letter indicates that the offer would match many of the commercial terms of the WCTP Agreement with a purchase price of \$14.5 million. However, the proposed transaction does not include an immediate closing of the Non-Tenure Assets with a management component as it relates to the Tenure Assets. Significantly, the proposed offer remains subject to the Minister's approval of the transfer of the Licence and consultation with the other 37 First Nations. Needless to say, this "offer" does nothing to alleviate the attendant risks and delays arising from the approval and consultation process, as does the TMPA.

- [105] Simply put, even now, six weeks later, no similar or superior offer to the TMPA has emerged from the Interested Nations; nor is there any evidence to suggest that there is an intention and reasonable likelihood of any such offer arising.
- [106] The Council and Katzie have not put forward an offer, let alone one that can be said to have met or exceeded these financial and other benefits under WCTP's offer.
- [107] Peters' counsel also now submits that they want to participate and are willing to make a "higher" offer. The only evidence presented by Peters is that, if the matter is adjourned, Peters "may consider and have time to pursue working with other First Nations to submit a higher bid". It is not clear if that intention is to make it higher than Peters' previous offer or higher than the WCTP offer. In my view, as with the Council and Katzie, this request for more time is insufficient to provide any reasonable basis to delay approval of the TMPA.
- [108] Despite the Group, the Former Monitor and the Monitor's efforts, the TMPA was the only offer, after 10 months following the commencement of the SISP, to provide value for the assets forming Parcel 9 of the SISP that was acceptable to the Group, the Former Monitor/ Monitor and the Interim Lenders. The TMPA is clearly the highest and best offer presently available for consideration and approval after all that time.
- [109] In sum, even if this application was adjourned further to allow the Interested Nations more time to prepare and present a competing offer, the only indication at this time is that any such offer would be materially inferior in many respects than offered by the present--and certain--offer of WCTP.
- [110] I conclude that the sales process under the SISP has been conducted in a fair and reasonable manner. Those parties who wished to submit bids or offers have had a more than adequate time to do so. To the extent that offers were made, including by Katzie and Peters, those parties have been treated fairly.

C. Is it Appropriate to Approve the Transactions?

- [111] The broad discretion of this Court pursuant to s. 11 of the CCAA allows it to grant "any order that it considers appropriate in the circumstances". It has been stated many times in the past that the Court's statutory jurisdiction is to be exercised with regard to the remedial objectives of the CCAA: *Century Services Inc v. Canada (Attorney General)*, 2010 SCC 60 at para. 70.
- [112] Section 36(1) of the CCAA allows the court to authorize the sale of a debtor company's assets out of the ordinary course of business. Section 36(3) of the CCAA lists the relevant non-exhaustive factors to be considered:
- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the monitor approved the process leading to the proposed sale or disposition;

- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[113] A more general test has been restated, as discerned from the above factors, namely to consider the transaction as a whole and decide "whether or not the sale is appropriate, fair and reasonable": see *Veris Gold Corp (Re)*, 2015 BCSC 1204 at para. 23, citing *Re White Birch Paper Holding Co.*, 2010 QCCS 4915 at para. 49, leave to appeal ref'd 2010 QCCA 1950.

[114] The Court must have regard to the Group and the stakeholders. The benefits of approval of the TMPA are far ranging and, in my view, affect all of these stakeholders.

[115] A closing of the WCTP transaction will avoid the Group incurring any further holding costs to maintain the Licence, said to be approximately \$1.1 million per annum.

[116] In addition, WCTP will assume over \$3 million in liabilities (relating to environmental, silviculture, market logging agreement and replaceable road construction) that provides the estate with substantial value. Accordingly, while Teal Cedar, as the licensee, will be liable for any obligations under the Licence until the consultation requirements are successfully completed and a transfer is approved by the Minister, WCTP is also liable for those obligations and has additionally assumed Teal Cedar's other liabilities.

[117] If WCTP is unsuccessful in obtaining the necessary approvals for the transfer of the Licence, WCTP will have no recourse against the Group and will not be entitled to a refund of any portion of the purchase price. Consequently, all the risk associated with a successful transfer is borne by WCTP.

[118] The direct and significantly affected financial stakeholders include the secured creditors, like Well Fargo (also the Interim Lender) and Royal Bank of Canada, who fully support approval of the TMPA. The Group is incurring significant interest on its total secured indebtedness, said to be in the range of \$176.8 million.

[119] The Interim Lenders have provided large sums for interim financing that has allowed the Group to continue its business operations in these proceedings. As of March 28, 2025, the amount owing to the Interim Lenders was approximately \$84 million. There are clear financial benefits to having the Group repay some of the debt owing to the Interim Lenders and reducing its substantial financial burden (by about \$13.7 million) no later than April 25, 2025. The Monitor estimates this will substantially reduce the Group's annual interest costs.

- [120] The Interim Lenders describe that there is already a collateral coverage shortfall of about \$53 million, such that they are at significant risk of not recovering their loans in full. The certainty under the TMPA alleviates some of that risk. Accordingly, they suggest, with some force, that any further delay, cost and uncertainty in addressing the Licence and approving the TMPA will cause extreme prejudice to the Interim Lenders, and negatively affects the Group's prospects and its overall stakeholders as a whole.
- [121] The stakeholder group also includes other affected persons, such as Domtar who places importance on the obligations that arise under its contractual relationship with Teal Cedar, and who will benefit under the New Domtar Agreement as proposed by the TMPA. As a direct stakeholder, Domtar also supports the approval in the sense that it protects Domtar's right under the New Domtar Agreement, despite the fact that wood supply has been curtailed since July 2023.
- [122] The consequences of a long term curtailment of Domtar's Crofton Mill--which is avoided under the TMPA--are significant to Domtar and others. Domtar describes that the operation of the Crofton Mill is critical to the local economy. The Crofton Mill employs 385 people and supports the employment of about another 1,000 people whose work relates to Crofton's operations. Any such further curtailment of wood supply to or shutdown of the Crofton Mill would result in devastating losses for Crofton and the local area, with the total economic impact in the hundreds of millions of dollars. Domtar considers that WCTP is an appropriate operator who will be able to manage wood-cutting operations under the Licence appropriately on a long-term basis.
- [123] The Group agrees that this sale process relating to the Licence should protect Domtar's rights, assuaging Domtar's concern regarding any attempt to disclaim the Domtar Agreement.
- [124] In addition, other significant benefits arise.
- [125] Many "social stakeholders" are also within the consideration by the Court in terms of meeting the objectives of the CCAA.
- [126] These "social stakeholders" include employees and other persons, groups and business interests who are more indirectly affected, along with the public interest: Century Services at para. 60.
- [127] Some 400 jobs will be saved by the proposed transactions. The Group and WCTP have agreed that WCTP will assume obligations under the collective agreement, and WCTP will offer employment to both unionized and salaried employees.
- [128] Given the current economic challenges facing Canada and in particular, BC, these are significant benefits for the larger stakeholder group affected by the Group's insolvency, including the local economies where the Group operates or where those persons doing business with the Group (such as Domtar) operate.

- [129] I have already addressed the arguments of the Interested Nations in relation to the Forest Act and in relation to their status as bidders or potential bidders.
- [130] In addition, First Nations groups who are affected by insolvency proceedings, such as the Interested Nations here, have been recognized as "social stakeholders" in insolvency proceedings: *Bloom Lake, g.p.l. (Arrangement relatif à)*, 2015 QCCS 1920 at para. 88; *aff'd* 8901341 Canada inc. c. Bloom Lake, g.p.l., 2015 QCCA 754. However, as "social stakeholders", while their more generalized concerns can be considered, the Court must approach such concerns with some caution if addressing such concerns amounts to detracting from the statutory objectives in the CCAA: *Imperial Tobacco Canada Limited*, 2025 ONSC 1358 at paras. 160-162.
- [131] Finally, the Group's representative, Trevor Ouellette, describes the WCTP transactions as "critical" and "essential" to the overall restructuring efforts of the Group.
- [132] Mr. Ouellette says that the Group cannot afford to wait for months for the Province's consultation process to take place before the purchase funds of \$14 million are received and applied to its outstanding debt. Needless to say, the sheer number of the First Nations who must be consulted (39) would suggest a more involved and lengthy process. As stated above, the purchase price is due on the Non-Tenure Asset Closing (no later than April 25, 2025) and is non-refundable notwithstanding the outcome of the consultation process with all First Nations.
- [133] Mr. Ouellette also advises that the Group is diligently working on several other significant transactions that they anticipate presenting to the Court for approval soon, each playing a critical role in their ongoing restructuring efforts.
- [134] Mr. Ouellette states that the Group believes that timely closure of this transaction and other pending approvals will significantly improve their position to secure sufficient refinancing, enabling them to propose a plan of arrangement to their creditors and exit the CCAA process as a financially restructured and stable enterprise. The Group describes that the essence of the plan would be to sell redundant assets, such as the License, leaving the Group to continue operating its core assets, such as the Surrey mill.
- [135] In an insolvency proceeding, it is generally considered that "time is money", in the sense that the longer the proceeding, the more expensive it becomes. Here, the Group points to its substantial ongoing debt service payments, ongoing professional fees, and potential market issues that arise from any further delay in addressing the License. Overall, the Group's refinancing options may be more limited if the WCTP transactions are not completed promptly.
- [136] While the Group's hoped-for outcome is by no means certain, it is beyond question that the Group's stated intentions--and its current means--in this proceeding are in complete accord with the remedial purposes of the CCAA: *Century Services* at para. 70.

- [137] I accept that the transaction contemplated by the TMPA is very significant to the Group's overall restructuring efforts and is beneficial to the entire stakeholder group.
- [138] After an extensive marketing campaign under the SISP over about 11 months, the TMPA has emerged as the best opportunity for the Group in terms of disposing of valuable assets with the significant benefits as outlined above.

CONCLUSION

- [139] In conclusion, I find that the approval of the transactions between the Group and WCTP can be considered by the Court at this time. In doing so, the Court does not usurp the authority of the Minister in respect of the Crown's duties under the Forest Act. In particular, this approval does not undermine the Minister's statutory obligations relating to the transfer of the Tenure Assets under s. 54 of the Forest Act and the Crown's obligations with respect to consultations rights for Indigenous groups.
- [140] In addition, I am satisfied that the Former Monitor and the Monitor have run a fair, reasonable and transparent sales process under the SISP toward obtaining the best agreement available in the circumstances.
- [141] Finally, I find that it is appropriate to grant the approvals sought in relation to the TMPA. It is a fair and reasonable transaction that provides significant benefits for the many stakeholders affected by the Group's insolvency. Approval is consistent with the Group's restructuring efforts to date, as supported by their major stakeholders and other relevant interests. In addition, this approval will allow the Group to move toward its ultimate goals in this restructuring which, if achieved, will also provide significant benefits to that stakeholder cohort.
- [142] No issues arise with respect to the Monitor's proposed distribution of the sale proceeds arising from the TMPA. All of the secured creditors agree on the proposed distribution, which accords with their acknowledged priorities.
- [143] I grant the two orders sought.

"Fitzpatrick J."

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Prepared on 27 October 2026 · Esheria