SUPREME COURT OF YUKON

Citation: *Yukon (Government of) v BYG Natural Resources Inc,* 2025 YKSC 59

Date: 20250912
S.C. No.04-A0004
Registry: Whitehorse

BETWEEN:

GOVERNMENT OF YUKON and
HIS MAJESTY THE KING IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF INDIAN AND NORTHERN AFFAIRS

PETITIONERS

AND

BYG NATURAL RESOURCES INC

RESPONDENT

Before Chief Justice S.M. Duncan

No one appearing for the Government of Yukon

No one appearing for the Government of Canada

Counsel for PricewaterhouseCoopers Inc — Eamonn Watson

REASONS FOR DECISION

Introduction

[1] This is an application by PricewaterhouseCoopers Inc (PwC), the court-appointed receiver-manager and interim receiver (the Receiver) of the property, assets and undertaking of BYG Natural Resources Inc. (BYG), for court orders:

a) approving the Receiver's recent activities;

b) approving the Receiver's fees and disbursements and statements setting out same;

c) discharging PwC as the Receiver;

d) approving legal counsel's fees and disbursements; and

e) continuation of the sealing order.

[2] The application was duly served to all interested stakeholders and was unopposed. There were no appearances other than counsel for the Receiver. Representatives from the Receiver and from the Government of Canada were present in the courtroom during the hearing.

[3] The orders requested were granted, conditional upon updated and corrected information to be filed after the hearing relating to the amounts of Receiver and counsel fees and disbursements, which was done in June 2025. The following reviews the background to this application, the applicable law, and the application of the law to the facts supporting the orders sought and granted.

Background

[4] The background to this receivership has been set out in detail in the previous reported decisions: *Yukon and Canada v BYG Natural Resources Inc.,* 2007 YKSC 2 (the "2007 Decision"), *Yukon and Canada v BYG Natural Resources Inc.,* 2017 YKSC 2 (the "2017 Decision"), and *Yukon and Canada v BYG Natural Resources Inc.,* 2020 YKSC 6 (the "2020 Decision"). For ease of reference, I will summarize it here.

[5] BYG was a mining company incorporated in Ontario on April 1, 1969. In 1984, BYG acquired 264 mining claims and mining leases, over 5,300 hectares located 60 kilometres west of Carmacks and 180 kilometres north of Whitehorse, Yukon (the Mine Site), in the traditional territory of Little Salmon/Carmacks First Nation (LSCFN). The property was in the area of Mount Nansen. The first discovery of gold and silver

occurred in 1943. A syndicate to explore the property was formed in 1962 and the construction of a mill and underground development began in 1967.

[6] After BYG acquired the Mine Site in 1984, it conducted and optioned third party exploration between 1985 and 1998. It received a water licence in March 1996 and began production in October 1996, continuing to November 1997. After a hiatus caused by violations of the terms of the water licence, production recommenced in February 1998 and continued to February 1999.

[7] BYG was subject to four separate directions under the now-repealed federal *Yukon Waters Act*, SC 1992, c 40, from the regulator at the time, the Department of Indian Affairs and Northern Development (Canada) between November 1997 and February 1999. It was permitted to resume operations in February 1998 after it took steps to mitigate the problems. However, BYG failed to comply with another direction in February 1999, including payment of its outstanding security deposit and environmental clean-up.

[8] On May 19, 1999, BYG was convicted in the Territorial Court of Yukon of three regulatory charges under the *Yukon Waters Act* and received the maximum fine of $100,000 on each charge. The breaches of its water licence included: a) failing to administer a simple treatment to stabilize levels of arsenic in its tailing pond; b) using faulty materials to build its tailings pond dam which allowed seepage to weaken the dam by erosion; c) improperly constructing the ditches surrounding the tailings pond; d) constructing the tailings pond haphazardly without proper plans or supervision; and e) failing to assign one person to ensure compliance with its water licence (2020 Decision at para. 12). The Territorial Court judge in his sentencing decision described

BYG as “inept, bumbling, amateurish and possibly negligent” (2007 Decision at para. 11).

[9] In July 1999, Canada determined that BYG had abandoned the Mine Site. Canada then assumed responsibility under the statute to address environmental and human health and safety concerns. This continued until 2003.

[10] On April 1, 2003, the Devolution Transfer Agreement (DTA) came into effect. Negotiated by Canada and the Yukon government, the DTA devolved governmental responsibilities from the federal government to the territorial government. It also transferred the administration and control of the land in the Yukon from the federal government to the territorial government. Under the DTA, the Mine Site was designated a Type II contaminated site and the Yukon government assumed responsibility for the care and maintenance of the Mine Site. The Yukon *Waters Act*, SY 2003, c 19, also came into effect on April 1, 2003, and authorized the Yukon government to exercise powers to address environmental and human health and safety concerns at the Mine Site. However, as a designated Type II site, a site requiring remediation under the DTA, it remained the financial responsibility of the federal government because the environmental damage requiring remediation occurred before April 1, 2003. Thus, since that date, the Yukon government has implemented the care and maintenance of the Mine Site, and the Government of Canada has been responsible for funding the costs.

[11] The environmental, human health, and public safety concerns at the Mine Site at the time BYG abandoned it were: a) approximately 300,000 m^3 of tailings in the Tailings Storage Facility; b) more than 500,000 m^3 of waste rock; c) approximately 55,000 m^3 of contaminated soil; d) building and infrastructure requiring demolition.

[12] On April 6, 2004, this Court granted the application of the governments of Canada and Yukon and appointed PwC as interim receiver and receiver-manager.

[13] PwC was also appointed trustee in bankruptcy of BYG pursuant to a bankruptcy order dated February 22, 2007. The trustee reported its findings on the transactions between BYG and its directors and entities owned by its directors in 2011. The Office of the Superintendent of Bankruptcy issued a clean letter of comments on January 30, 2014, and the trustee was discharged from this role on August 26, 2014.

[14] During the Receivership, the Receiver sold BYG assets not required for the care and maintenance of the Mine Site including publicly traded shares held in unrelated companies, mineral claims and leases on land peripheral to the claims and leases required to carry out care and maintenance on the site, and mill equipment. The remaining 56 claims and leases, some of which are subject to placer mining claims, contain the processing mill, the tailings storage facility, camp buildings, and the open pit. The Receiver also retained one surface licence allowing the construction and maintenance of an electrical power transmission line and two surface leases allowing work to be conducted on the Mine Site, as well as other infrastructure and equipment required for the carrying out of the care and maintenance of the Mine Site.

[15] Before May 2016, the governments asked the Receiver to develop and implement a process to obtain proposals from qualified parties to purchase the remaining BYG assets and carry out the remediation work (the Proposal Solicitation Procedure). On May 1, 2016, the Court approved the process. From that process, a purchaser emerged, Mount Nansen Remediation LP (MNR LP) - a joint venture between Ensero Solutions (formerly Alexco Environmental Group) and JDS Energy &

Mining Inc. In 2019, MNR LP signed agreements with the Government of Canada and LSCFN to undertake the remediation and environmental monitoring of the Mine Site, including the environmental and socio-economic assessment of such proposed activities as required under the *Yukon Environmental and Socio-Economic Assessment Act,* SC 2003, c 7 ("*YESAA*"). Assets were transferred to MNR LP; they were assigned the existing surface lease and the water licence; and they took possession of BYG's books and records.

[16] Originally, the Proposal Solicitation Procedure was expected to be completed over 1.6 years. In fact, it took 3.1 years to complete because the potential proponents requested and were granted extensions of time for completion of the request for qualifications; the evaluations of the qualifications and the proposals were delayed due to difficulties in scheduling of the committee members; it became apparent at the request for proposal stage that the proposed design was not optimal, requiring the remediation work to be significantly redesigned and consequently the Remediation And Security Agreement, the Form of Proposal, and other Proposal Solicitation Procedure documents to be re-written and re-negotiated; there was a delay in obtaining an engineering report and safety plan necessary to carry out tours of the mill building; and an extended period was required for the assessment of the care and maintenance activities under *YESAA* in order to obtain a water licence.

[17] The governments agreed that the overall objectives of the remediation were to:

a) protect human health and safety;

b) protect and restore the environment including land, air, water, fish and wildlife and their habitats;

c) return the Mine Site to an acceptable state that reflects original, traditional, and pre-mining land use;

d) maximize benefits to LSCFN and other people of the Yukon; and

e) manage risk in a cost-effective manner.

[18] The Receiver has provided regular reports to the Court updating its receivership activities and seeking orders where necessary.

[19] The Receiver has never had responsibility for the remediation of the Mine Site except to facilitate the process as described above: remediation is the responsibility of the governments. The remediation continues. It includes relocating the tailings, contaminated soils and waste rock piles into the open pit, and treating contaminated water at the site, and re-aligning Dome Creek Valley to its original course. The project consists of three phases with a temporal scope of 25 years. The current status of the project proposal is seeking approval in the *YESAA* process.

Analysis

a) Receiver's Activities

Legal Framework

[20] The authority for court approval of the Receiver's activities arises from two sources. First, section 23 of the Receivership Order provides: "the Receiver shall pass its accounts from time to time...". Passing of accounts allows the court to ensure the Receiver's activities, fees and disbursements are reasonable and fair (*Redcorp Ventures Ltd. (Re),* 2016 BCSC 188 ("*Redcorp*") at para. 22). "Time to time" has been interpreted as periodically throughout a receivership (*Redcorp* at para. 28).

[21] Second, the court has the inherent jurisdiction to approve the activities of a court-appointed receiver. The receiver must meet the objective test of showing it has acted reasonably, prudently and not arbitrarily in order for court approval to be granted (*Leslie & Irene Dube Foundation Inc. v P218 Enterprises Ltd.,* 2014 BCSC 1855 at para. 54).

[22] Court approval of a receiver's (or monitor's) activities promotes transparency, problem solving, accountability, efficiencies, and protection. The Court of Appeal in *Confectionately Yours Inc., Re* (2002), 219 DLR (4th) 72 (ONCA), wrote that the receiver has a duty to report to the court who appointed it because the receiver is accountable to the court and to all interested parties. The court must ensure the receiver as court officer discharges its duties properly (at paras. 34-36 quoted in *Redcorp* at para. 19). The court in *Target Canada Co., Re*, 2015 ONSC 7574 at para. 23 particularized the practical advantages of and policy reasons for court approval in the context of a monitor's activities under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (*CCAA*), and in *Hanfeng Evergreen Inc., (Re),* 2017 ONSC 7161 at para. 15, the court applied those same principles, factors and process to a receivership. Specifically, the courts in both cases set out the following specific purposes of court approval of court officer activities:

a) allows the court officer to move forward with the next steps in the proceedings;

b) brings the court officer's activities before the court;

c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;

d) enables the court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner;

e) provides protection for the court officer not otherwise provided by statute; and

f) protects the creditor from the delay and distribution that would be caused by:

(i) re-litigation of steps taken to date; and

(ii) potential indemnity claims by the court officer

Application to facts of this case

[23] In this case, the Receiver has passed its accounts twice previously, and the Court has approved its activities on several previous occasions.

[24] The most recent twelfth report (dated March 21, 2025) details the completion of the following Receiver's activities since the eleventh report dated April 24, 2019. Those activities include:

> 4.3.1 Assigned … the Dome 12 Option Agreement[1] to 1011308 B.C. Ltd., extended the term of the Dome 12 Option Agreement to October 31, 2028, and amended a definition in accordance with the 13, 2016;
>
> 4.3.2 Execution of the following activities in relation to the PSP [Proposal Solicitation Procedure] as directed by the May 1, 2016 Order:
>
> 4.3.2 Sales and Marketing Plan, including but not limited to, distribution of a teaser, publishing notice of the sale process in various publications, and managing communications through the deployment of a website and email address dedicated to the PSP;
>
> 4.3.2 Request for Qualifications, including but not limited to, creation of an electronic data room for due diligence, manage the PSP deposits,

[1] this was an option agreement with an October 18, 2018 termination provision for a claim called Dome 12, granting 101073531 Saskatchewan Ltd the exclusive option to purchase it for $25,000 once remediation was complete. Given the status of the remediation and with no opposition from governments, the Receiver extended the term of the option agreement until October 31, 2028, and authorized the assignment of the option agreement to 1011308 B.C.Ltd.

issue addendums as required, appoint the members of the Evaluation Committee, facilitate the evaluation of the seven responses by the Evaluation Committee, and meet with the debrief unsuccessful proponents;

4.3.2 Request for Proposals, including but not limited to, manage documentation and forms in the data room, issue addendums and other directions re technical / procedural matters, facilitate information meetings in person in Whitehorse between the Governments and proponents, meet with LSCFN Chief and Council to discuss status updates, solicit feedback, and discuss next steps, facilitate individual introductory meetings between proponents and LSCFN, engage a safety consultant and engineer to manage site safety in relation to 3 site visits, engage a consultant to develop a Project Charter, facilitate the evaluation of each proposal by the Evaluation Committee, and communicate the results of the evaluation to the appropriate parties;

4.3.3 Negotiated and executed Lease #2019-4141;

4.3.4 Took all necessary actions contemplated in the **APA** [asset purchase agreement] to transfer the interests of the Receiver in the Purchased Assets to the Purchaser [MNR LP] upon Final Closing, including:

4.3.4 Execution of documents;

4.3.4 Assigning Lease #2019-4141 and the water licence to the Purchaser;

4.3.4 Delivering the Company's books and records in the Receiver's possession to the Purchaser;

4.3.4 Receiving the Purchase price; and

4.3.4 Filing the required certificates with the Court; and

4.3.5 Maintained contact with Canada on the status of the Lease #115I03-003.

[25] The approval sought in this application is for the specific activities outlined in the twelfth report. Applying the purposes of court approval outlined in the Ontario cases, I approve the Receiver's activities. Approval will allow the Receiver to move forward with its discharge; by bringing all of its activities before the Court to be approved, consistent with what it has done for all other activities throughout the Receivership, it allows for any concerns of stakeholders to be addressed (no concerns were raised here); allows the Court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner; provides protection for the Receiver; and protects creditors from delay caused by re-litigation of steps taken to date and potential indemnity claims by the court officer.

b) Receiver's Fees

Legal framework

[26] The purpose of court approval of the receiver's fees and disbursements is related to the court approval of activities. It allows the supervising court to exercise its discretion to determine if those fees and disbursements are properly made and are fair and reasonable in the circumstances (*Redcorp* at para. 22; *Bank of Nova Scotia v Diemer*, 2014 ONSC 365 (*Bank of Nova Scotia*) at para. 18). There is no fixed rate or settled scale for making this determination. The approach was described by the New Brunswick Court of Appeal in *Belyea v Federal Business Development Bank,* [1983] NBJ No. 41 (NBCA) at para. 3:

> … The governing principle appears to be that the compensation allowed a receiver should be measured by the fair and reasonable value of his services and while sufficient fees should be paid to induce competent persons to serve as receivers, receiverships should be administered as economically as reasonably possible. Thus, allowances for

> services performed must be just, but nevertheless moderate rather than generous.

[27] Similar observations were made by the court in *Bank of Nova Scotia* at para. 19: "In my view, in an assessment of fees, there must be practical and reasonable limits to the amounts awarded and those amounts should bear some reasonable connection to the amount that should reasonably have been contemplated. …"

[28] Factors to be considered in assessing the fairness and reasonableness of a receiver's fees include:

> (a) the nature, extent and value of the assets;
>
> (b) the complications and difficulties encountered by the receiver;
>
> (c) the time spent by the receiver;
>
> (d) the receiver's knowledge, experience and skill;
>
> (e) the diligence and thoroughness displayed by the receiver;
>
> (f) the responsibilities assumed; the results of the receiver's efforts; and
>
> (g) the cost of comparable services.
>
> (See: *Frank Bennett, Bennett on Receiverships*, 3rd ed (Toronto: Carswell, 2011) at 595)
>
> *HSBC Bank Canada v Maple Leaf Loading Ltd*., 2014 BCSC 2245 (*HSBC Bank Canada*) at para. 11)

[29] The process of fee approval has been addressed by courts. In *Bank of Nova Scotia*, the court followed the direction of appellate courts to consider all the relevant factors and award fees in "a more holistic manner" (at para. 19). Generally, there was no need to scrutinize the dockets, second guess the time spent on each activity, or

review line by line each explanation. However, if the amounts of time or money claimed are excessive or over-reaching, then further analysis may be required to assess reasonableness. The reasonableness determination includes a cost-benefit analysis, linking the fee assessment to the activities. The accounts are to be verified by affidavit and contain sufficient evidence to allow the court to conclude the fees charged were at the standard rates and charges for each of the professionals. They also must contain a sufficient description of the services rendered in order to allow a court to assess whether the expenditures were properly made (*Redcorp* at para. 26).

Application to facts of this case

[30] Here, the Receiver requests that an amount of $671,005 in fees, and disbursements in the amount of $41,113.74, plus applicable taxes, be approved, for activities completed since May 2019. Upon review of the affidavit of Lucas Matsuda, Vice President at PwC, I am satisfied that the fees and disbursements were properly incurred for the activities described above; that the work was delegated to the appropriate professionals at the appropriate seniority level and hourly rate; and that the amounts are consistent with the amounts charged by other firms of comparable size for similar work in nature and complexity. The statements are also approved.

[31] Applying the relevant factors set out above, the reasonability of the fees is confirmed because:

a) the assets of the receivership were complex given their remote location, the extent of the environmental obligations on the Mine Site, the interests of the governments, and the need for a design plan and sale process

required to fulfill the approach for the next steps including remediation of the Mine Site;

b) the Receiver has expended significant time in working with governments to develop and execute the Proposal Solicitation Procedure, as well as negotiating lease and various sale agreements;

c) the Receiver is a Licenced Insolvency Trustee under a corporate licence in good standing with the Office of the Superintendent of Bankruptcy (part of Innovation, Science and Economic Development Canada), the federal regulator of the Canada's insolvency regime and has significant experience in acting as a receiver for abandoned mine sites in the Yukon; and

d) the previous court-approved reports as well as the twelfth report support the diligence and thoroughness of the Receiver and provide evidence of its acting in good faith.

[32] The Receiver provided a supplementary affidavit dated June 25, 2025, to clarify disbursements charged in May 2016 but incurred in March 2016. They were not charged in the invoice for the March 2016 activities. The supplementary affidavit also clarified the definition of office expenses as they appear in the disbursements, and confirmed the absence of duplication for other disbursements in the invoices entitled supplies - office.

c) Discharge of Receiver

[33] The Receiver advises it has completed the administration of the receivership. The Government of Canada has directed the Receiver to seek its discharge.

[34] There are two assets that have not been realized. The first is Lease #115I03-003, located outside of the area covered by the order-in-council that prohibits entry to the land to be remediated, including prohibition of any re-staking of expired claims. The lease is also subject to ongoing development of placer claims, making any remediation impossible. This lease will be the responsibility of governments outside of the Receivership. The second is the cash holding of the Receiver of $625,317.71 in its trust account. The Government of Canada has directed that all surplus funds held by the Receiver at the conclusion of the receivership be placed into the Remediation Trust (to which the Receiver is not a party) established by the Remediation and Security Agreement between MNR LP and the Government of Canada, for the purpose of contributing to the cost of the ongoing remediation activities.

[35] Based on the report of activities, and the proposed plan related to the two outstanding assets, the discharge of the Receiver is approved.

d) Legal Fees

Legal framework

[36] The approach to and methodology of the approval of the Receiver's legal fees is similar to that for the Receiver's fees. Generally, the court must exercise its discretion to determine the fairness and reasonableness of the legal fees. Factors used to make that determination include:

(a) the time expended;

(b) the complexity of the receivership;

(c) the degree of responsibility assumed by the lawyers;

> (d) the amount of money involved, including the amount of proceeds after realization and the payments to the creditors;
>
> (e) the degree and skill of the lawyers involved;
>
> (f) the results achieved; and
>
> (g) the client's expectations of the fee amount.
>
> (*HSBC Bank of Canada* at para. 12).

[37] Evidence in support of reasonableness should be provided by affidavit.

Application to the facts of this case

[38] Dentons Canada LLP (Dentons) submitted an affidavit of John Sandrelli, senior partner at Dentons, who have been counsel to the Receiver since their appointment. Dentons has assisted the Receiver with its various activities throughout the receivership. Attached as exhibits to the affidavit are invoices from the firm (redacted to protect solicitor-client privileged information).

[39] The Receiver seeks approval of Dentons' fees incurred since April 1, 2016. Many of the activities described in the twelfth report began in 2016 and took longer than anticipated to complete because of their complexity. For example, Dentons has provided legal assistance in assigning and extending the Dome 12 Option Agreement; in developing and implementing the Proposal Solicitation Procedure sales and marketing plan, the request for qualifications including multiple addendums, and the request for proposals including multiple addendums; in developing a project charter for the remediation framework; in obtaining a water licence and amended surface lease for the remediation; in preparing the Asset Purchase Agreement between the Receiver and

MNR LP. As noted above the Proposal Solicitation Procedure was delayed for various reasons and took over three years to complete, rather than the anticipated 18 months.

[40] The legal fees and disbursements approved from March 4, 2004, to March 31, 2016, were $389,118. From April 2016 to March 21, 2025, the legal fees for which approval is requested amount to $500,914.04. The Receiver confirms it has examined the invoices, the services were duly authorized and provided, and is of the view that the charges are reasonable.

[41] Applying the factors from the jurisprudence, Dentons' fees are reasonable because:

a) the receivership was complex given the nature and remote location of the assets, the environmental obligations for the Mine Site, the interests of the governments and the additional time necessary to develop and implement a design plan and sale process to complete the governments' agreed upon approach;

b) extensive time spent working with governments in developing and executing the Proposal Solicitation Procedure and negotiating lease and sale agreements;

c) assumption of a significant amount of responsibility and close working relationship with the Receiver;

d) the lawyers are experienced insolvency lawyers and tasks have been appropriately delegated to the right level to ensure cost-effectiveness; and

e) the Receiver has indicated its view that the legal fees are reasonable.

[42] In addition to the invoices provided with the affidavit of John Sandrelli, Dentons seeks an additional $25,000, all inclusive, for services provided between March 31, 2025, to the end of their discharge. This includes the within application and further legal matters related to the discharge. Two affidavits were filed on June 26, 2025, in support of this additional fee. The affidavit of Lucas Matsuda confirmed payment of $25,428.97 to Dentons for the matters set out in the invoice from November 2024 to the end of the discharge. The second affidavit from Eamonn Watson, senior associate at Dentons and counsel on this application attached the invoice in support of the fees of $20,895, disbursements of $3,324.50, and taxes of $1,209.47 for a total of $25,428.97. All activities on the invoice relate to the within application and discharge activities.

e) Sealing order

[43] The Court in the 2020 Decision granted a partial sealing order, dated May 6, 2019, without a termination date, over the unredacted versions of the approved Proposal of the Preferred Proponent and the Draft Asset Purchase Agreement. The complete Receiver's Supplemental Eleventh Report to the Court was filed on April 26, 2019, with redactions in those two documents. The redactions were approved in order to prevent prejudice to the Preferred Proponent in future commercial dealings (at para. 29).

[44] At the hearing, the Receiver advised the proponent is requesting that the partial sealing order continue, because their work is ongoing and the proponent continues to do work in this area. The Receiver reiterated that the Government of Canada indicated its interest in having the sealing order continue.

[45] The open courts principle requires a justification for not presenting all relevant material to the public. The three-step test for a restriction on court openness was set out in *Sherman Estate v Donovan*, 2021 SCC 25: the applicant must establish that (i) court openness poses a serious risk to an important public interest; (ii) the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent this risk; and (iii) as a matter of proportionality, the benefits of the order outweigh its negative effects.

[46] While I understand the commercial concerns of the proponent while the negotiations were ongoing, as well as before the proponent was selected and before the agreement of purchase and sale, including the remediation costs, was confirmed, it is more difficult to understand the ongoing concerns now that the proponent has been confirmed and the agreement finalized. The Receiver took no position on this point but confirmed the Court had the inherent jurisdiction to review its sealing order even after the Receiver's discharge.

[47] On this basis, I will not displace the existing partial sealing order at this time, but I order that this matter return to court in one year's time (from the date of these reasons) for submissions by counsel for the Government of Canada and counsel for the proponent on why the sealing order should be continued.

_____

DUNCAN C.J.