Court of King's Bench of Alberta

Citation: Mirror Trading International (Pty) Ltd (Re), 2026 ABKB 293

Date: 20260415
Docket: 2301 05332
Registry: Calgary

In the Matter of the *Bankruptcy and Insolvency Act*, RSC 1985 C. B-3, as amended

In the Matter of Mirror Trading International (Pty) Ltd.

Chavonnes Badenhorst St Clair Cooper, as Foreign Representative

Applicant

Reasons for Decision
of the
Honourable Justice M.A. Marion

I. Introduction and Background

[1] This is an application (**Application**) in this action (**Action**) commenced under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (*BIA*) by the foreign representative (**Foreign Representative**) of Mirror Trading International (Pty) Ltd (**MTI**). The Foreign Representative seeks the appointment of GlassRatner Restructuring Inc. as national receiver (**Proposed Receiver**) over certain MTI property in Canada and related claims. The Foreign Representative brings the Application so that the Proposed Receiver can run a single insolvency Canadian claims process (**Claims Process**) to advance various "clawback" claims (**Clawback Claims**) to recover from Canadians who allegedly received Bitcoin from MTI's South African-based Bitcoin "Ponzi-type" scheme (**Scheme**).

[2] MTI is an insolvent South African company. It was at the centre of the Scheme by which investors paid Bitcoin in return for the promise of unrealistically high returns. The Scheme also utilized a referral system by which existing investors received Bitcoin referral bonusses for the recruitment of new members. As often happens in Ponzi-type schemes, some investors higher up the chain were net winners (receiving more from the scheme than they invested), some were net losers (receiving less than their investment back), and some are complete losers (receiving nothing back).

[3] MTI is the subject of winding-up and liquidation proceedings (**Foreign Proceedings**[1]) in the High Court of South Africa (Western Cape Division, Cape Town) (**Foreign Court**). Pursuant to a December 15, 2022 Letter of Request, the Foreign Court sought the recognition of MTI's liquidation and the appointment of the Foreign Representative (and others) as MTI's joint liquidators (together, **Liquidators**) to, among other things, institute legal proceedings in Canada (including in relation to claims MTI in liquidation "has brought or intends to bring against any investors who have benefited at the expense of others" in the Scheme), and to grant any order the Canadian court may consider just and appropriate in assisting the Foreign Court in the most effective administration and winding-up of MTI.

[4] The Liquidators have obtained foreign recognition of the Foreign Proceedings in numerous countries worldwide in the pursuit of over 750 investors that received Bitcoin from the Scheme before it collapsed.

[5] On May 1, 2023, Justice Romaine granted an order (**Recognition Order**) under sections 269 and 270 of the *BIA* which (among other things): (1) recognized the Foreign Proceedings as a "foreign main proceeding" under the *BIA*; (2) ordered that the Liquidators were "entrusted with the administration and realization" of all of MTI's property located in Canada; (3) granted stays affecting MTI's business or property; (4) permitted certain South African appointed commissioners to examine MTI's investors residing in Canada; and (5) granting the Foreign Representative permission to apply to the Court for advice and direction in the discharge of its powers and duties under the Recognition Order.

[6] I understand that the power to examine MTI investors in Canada under the Recognition Order was never used. Instead, in summer 2024, the Liquidators commenced 19 separate civil actions in the Alberta Court of King's Bench (**Clawback Actions**) against 31 Canadians (residing in several different provinces) (collectively, **Defendants**) to recover the excess funds they allegedly received pursuant to the Scheme. The Defendants' liability is asserted under the *Insolvency Act*, 24 of 1936 of the Republic of South Africa; under sections 95 and 96 of the *BIA*; under Alberta's *Fraudulent Preference Act*, RSA 2000 c F-24 (*FPA*) (or similar legislation in other provinces); under unjust enrichment; and via tort claims in conversion, detinue, intentional interference with economic relations and unlawful means.

[7] The Clawback Actions remain in various early stages. Some Defendants apparently have not yet been served. Some were noted in default and default judgments in the aggregate of over C$31 million have been obtained (although some default and enforcement proceedings are being challenged). Some Defendants have settled. Some Defendants have defended with those actions in various early stages of discovery under Part 5 of the *Alberta Rules of Court*, Alta Reg 124/2010 (*Rules*). Some Defendants have challenged or intend to challenge jurisdiction or forum.

[8] On June 24, 2025, one of the Clawback Actions (**Pablos Velez Action**[2]) was stayed by order of Applications Judge Farrington (**Farrington Order**) on the basis the Court lacked jurisdiction *simpliciter*, including because the defendant (**Pablos Velez**), a Quebec resident, had no connection to Alberta. The Farrington Order was appealed but that appeal has been adjourned *sine die*.

[1] Masters Ref C906/2020.
[2] Action No. 2401-04794.

[9] On August 15, 2025, the Foreign Representative sought case management of the Clawback Actions.

[10] On August 18, 2025, the Foreign Representative filed an application for advice and directions in this Action, seeking confirmation that the Alberta Court of King's Bench has jurisdiction to adjudicate all claims against the Defendants in the Clawback Actions and authorizing the Foreign Representative to continue those actions.

[11] On August 28, 2025, Justice Simard dismissed the Foreign Representative's application for what he described as an "overarching order" (**Simard Decision**). Justice Simard found that he could not override the jurisdiction *simpliciter* and *forum conveniens* analysis that applies to the existence and assumption of a court's jurisdiction over civil actions, as set out in ***Club Resorts Ltd v Van Breda***, 2012 SCC 17, in ***Haaretz.com v Goldhar***, 2018 SCC 28 at paras 26-32, and as embodied in the *Rules*. Justice Simard had no evidence about the circumstances underlying the specific Clawback Actions. I am advised that the Simard Decision is also under appeal and it too has been adjourned *sine die* pending the Application.

[12] On September 8, 2025, Justice Simard was appointed case management judge of the Clawback Actions. In the context of case management conferences, the Foreign Representative raised the possibility of an application akin to the Application and, in January 2026, Justice Simard permitted it to be scheduled on the commercial list. The Clawback Actions appear to be idle pending this Application.

[13] On March 11, 2026, the Foreign Representative filed this Application, relying on an August 2025 administrative affidavit and a March 5, 2026 affidavit of the Foreign Representative. The Proposed Receiver has also provided a pre-appointment report.

[14] The Application is opposed by five of the 31 Defendants (**Respondents**). The Respondents did not question the Foreign Representative on his affidavits and did not file any new evidence of their own. They relied on some materials filed in the Clawback Actions.

[15] For the reasons set out below, the Application is granted in part. The Proposed Receiver is appointed "trustee as receiver" over the "Affected Property" (as defined in the proposed order and amended below), with related powers, and is authorized to investigate and propose a detailed Claims Process, or such other alternative process as it may recommend. In the meantime, the Clawback Actions are stayed pending further order of the Court.

II. Issue

[16] The issue is whether to grant the requested receivership order.

III. Analysis

A. Legal Framework

[17] The Application engages several overlapping legal frameworks, discussed below.

1. Ancillary Relief Under Part XIII of the *BIA*

[18] Traditionally, Canadian courts have adhered to a "plurality approach" to cross-border bankruptcy and insolvency matters, which is a middle position between a "territorialist" and a "universalist" approach: ***Holt Cargo Systems Inc v ABC Containerline NV (Trustees of)***, 2001 SCC 90 at para 80.

[19] A "territorialist" approach is one in which the court in each jurisdiction where the debtor has assets distributes the assets located in that jurisdiction pursuant to local rules, and a "universalist" approach is one where a primary insolvency proceeding is instituted in the debtor's domiciliary country, and ancillary courts in other jurisdictions defer to the foreign proceeding and in effect collaborate to facilitate the centralized liquidation of the debtor's estate according to the rules of the debtor's home country: ***Holt Cargo*** at para 23, adopting definitions from *In re Treco*, 240 F.3d 148 (2d Cir. 2001), at p. 153.

[20] The plurality approach recognizes that different jurisdictions may have a legitimate and concurrent interest in the conduct of an international bankruptcy, and that the interests asserted in Canadian courts may, but not necessarily must, be subordinated in a particular case to a foreign bankruptcy regime, which reflects a desire for coordination not subordination: ***Holt Cargo*** at para 80.

[21] Since 1997, the Canadian approach to cross-border bankruptcies and insolvencies has been amended several times, under both the *BIA* and the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (*CCAA*). As matters currently stand, Part XIII of the *BIA* and Part IV of the *CCAA* incorporate "significant portions" (but not all) of the UNCITRAL Model Law on Cross-Border Insolvency (*Model Law*): ***Pelletier (Re)***, 2021 ABCA 264 at para 54 (footnote 1) [***Pelletier CA***]; ***Romspen Mortgage Limited Partnership v 3443 Zen Garden Limited Partnership***, 2024 ABCA 333 at para 13; ***Caterpillar Financial Services Corporation v Boale, Wood & Company Ltd***, 2014 BCCA 419 at paras 51-55; ***Probe Resources Ltd (Re)***, 2011 BCSC 552 at para 7.

[22] The purpose of the Model Law is to facilitate and promote international cooperation and comity among courts in respect of insolvencies of companies with a presence in more than one jurisdiction: ***LLS America LLC (Trustee of) v Dill***, 2017 BCSC 469 at para 133 [***Dill BCSC***]. It "focuses on authorizing and encouraging cooperation and coordination between jurisdictions, rather than attempting the unification of substantive insolvency law, and respects the differences among national procedural laws": ***Caterpillar Financial Services*** at para 52, citing the Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency.

[23] The purpose of Part XIII of the *BIA* is set out in section 267:

> (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
>
> (b) greater legal certainty for trade and investment;
>
> (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtors;
>
> (d) the protection and the maximization of the value of debtors' property; and

(e) the rescue of financially troubled businesses to protect investment and preserve employment.

[24] Part XIII of the *BIA* and Part IV of the *CCAA* have been recognized as representing a "modified universalism" approach, which involves the court recognition of foreign proceedings "representing some compromise of state sovereignty under domestic proceedings in one jurisdiction to advance international comity and cooperation": ***MtGox Co, Ltd (Re)***, 2014 ONSC 5811 at para 11; ***Nishiyama (Re)***, 2020 BCSC 551 at paras 25-26; ***Dill BCSC*** at para 117; ***In The Matter of Voyager Digital Ltd***, 2022 ONSC 4553 at para 13.[3]

[25] The focus on the principles of comity and cooperation have been recognized in numerous cases, since they are likely to enhance the fair, consistent, efficient administration of bankruptcies and insolvencies; they are likely to protect the interests of creditors, other interested persons and debtors; and they are likely to avoid multiple proceedings, inconsistent judgments and general uncertainty: ***Purdue Pharma (Re)***, 2026 ONSC 902 at para 27; ***Heijs v Gerald W Breuker, as Dutch Trustee***, 2018 PECA 12 at para 37; ***Nishiyama (Re)*** at para 26; ***Voyager Digital*** at para 9, citing ***Hollander Sleep Products, LLC et al, Re***, 2019 ONSC 3238 at paras 41-42; ***Roberts v Picture Butte Municipal Hospital***, 1998 ABQB 636 at para 20.

[26] The principles of cooperation and comity are also manifested in section 275(1) of the *BIA*, which provides that if an order recognizing a foreign proceeding is made, "the court shall cooperate to the maximum extent possible with the foreign representative and the foreign court involved in the foreign proceeding". Section 275(3) of the *BIA* provides that "cooperation may be provided by any appropriate means", which "does not place a limit on the court's discretion" and includes (among other things), appointing a person to act at the direction of the court, the coordination of the administration and supervision of the debtor's assets and affairs, and the coordination of concurrent proceedings regarding the same debtor: section 275(3)(a), (c) and (e); ***Pelletier CA*** at paras 43-44.

[27] As stated by the Court of Appeal in ***Pelletier CA*** at para 44: "[r]eading subsections 275(1) and 275(3) together, the court is required to cooperate with foreign jurisdiction to the maximum extent possible, and it is authorized to do so by any appropriate means."

[28] Section 269 of the *BIA* provides a foreign representative the right to apply to recognize a "foreign proceeding", which is a judicial or administrative proceeding outside Canada "dealing with creditor's collective interests generally under any law relating to bankruptcy or insolvency in which a debtor's property and affairs are subject to control or supervision by a foreign court for the purpose of reorganization or liquidation". Section 270 of the *BIA* is mandatory and provides that the Court must grant an order "recognizing the foreign proceeding" if the Court is satisfied the applicant is a foreign representative and the application relates to a foreign proceeding: ***Pelletier CA*** at para 26.

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[3] See also: Alfonso Nocilla, "Modified Universalism and COMI: A Comparative Analysis", 2024 22 *Annual Review of Insolvency Law*, 2024 CanLIIDocs 3050 at 5-6, citing Jane Dietrich & Michelle Pickett, "Stranger Things: Recent Developments in Recognition Proceedings" (2023) 12 J Insolvency Inst Can 155 at 174; Alfonso Nocilla, "Canadian Cross-Border Insolvency Law and the Triumph of 'Modified Universalism': A Retrospective", (2024) 33:3 Intl Insolvency Rev 399 at 413; Karen Fellowes et al, "Part XIII of the Bankruptcy and Insolvency Act: The Less Recognized Recognition Statute", 2023 21 *Annual Review of Insolvency Law*, 2023 CanLIIDocs 3071 at 3.

[29] Upon the recognition of a foreign proceeding, section 271 of the *BIA* automatically provides a stay in the form of certain prohibitions on the debtor and others relating to the debtor's property, debts, liabilities or obligations: ***MtGox Co, Ltd (Re)*** at paras 19, 24, 27.

[30] Sections 272 and 274 of the *BIA* provide a recognized foreign representative the ability to seek other relief from the court or to engage several processes under the *BIA* (including in respect of bankruptcy orders (section 43), interim receivers (sections 46-47.1), assignments into bankruptcy (section 49) and proposals (sections 50, 50.4)).

[31] It is not mandatory that Part XIII of the *BIA* be invoked in any particular situation: ***Kriegman v Dill***, 2018 BCCA 86 at para 104. That is up to the foreign representative or any other person appointed by the Court under Part XIII.

[32] Sections 272 and 273 (and their equivalent under the *CCAA*) of the *BIA* provide courts with a broad statutory power and discretion to make ancillary or other orders if it is satisfied that it is necessary for the protection of the debtor's property or the interests of creditors: ***Pelletier (Re)***, 2020 ABQB 540 at para 38 [***Pelletier QB***] aff'd ***Pelletier CA***; ***In the Matter of CURO Canada Corp and LendDirect Corp***, 2024 ONSC 2057 at para 12; ***Tucker v Aero Inventory (UK) Limited***, 2010 ONSC 1196 at para 22; ***Probe Resources*** at paras 34-41. Section 284(1) of the *BIA* provides that the Court may also apply any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of the *BIA*.

[33] In the context of a foreign main proceeding, the Court has the power to grant orders:

(a) for the examination of witnesses (*BIA*, section 272(1)(b));

(b) entrusting the administration or realization of all or part of the debtor's property located in Canada to the foreign representative or any other person designated by the Court (*BIA*, section 272(1)(c));

(c) appointing a trustee as receiver of all or any part of a debtor's property in Canada, for a term that the court considers appropriate and directing the receiver to do all or any of the following, namely (i) to take possession of all or a part of the debtor's property specified in the appointment and to exercise the control over the property and over the debtor's business that the court considers appropriate; and (ii) to take any other action the court considers appropriate (*BIA*, section 272(1)(d));

(d) recognizing or enforcing other orders in the foreign proceedings, based on the consideration of numerous factors: ***Pelletier QB*** at paras 38-47; ***Pelletier CA*** at para 60. This is done regularly under the equivalent regime in Part IV of the *CCAA*: ***Payless Holdings LLC (Re)***, 2017 ONSC 2321 at paras 4-7; ***Diebold Nixdorf, Incorporated***, 2023 ONSC 4230 at paras 37-48; ***Massachusetts Elephant & Castle Group, Inc (Re)***, 2011 ONSC 4201 at paras 36-40; ***Digital Domain Media Group, Inc (Re)***, 2012 BCSC 1565 at paras 30-39; ***Instant Brands Acquisition Holdings Inc, et al***, 2024 ONSC 1204 at para 24; and

(e) providing what has been coined "independent autonomous" relief that has not yet granted in, or may not be available in, the foreign proceedings: Linc Rogers and

Caitlin McIntyre, "Whose Jurisdiction Is It Anyway? An Analysis of Autonomous Relief in Foreign Recognition Proceedings", 2024 22 *Annual Review of Insolvency Law*, 2024 CanLIIDocs 3045 at 18; ***Sutton et al v Dayaram et al***, 2022 ONSC 2413 at paras 77-81.

[34] Under modified universalism, the principles of cooperation and comity continue to have limits. For example, the Court must consider the litigants before it, and other affected Canadians, to determine whether the proposed step will be at the expense of injustice to Canadian citizens: ***Byer (Re)***, 2022 BCSC 2018 at para 135, citing ***Canadian Imperial Bank of Commerce v ECE Group Ltd***, 2001 CanLII 28442 (ON SC) at paras 10-11; ***Singer Sewing Machine Company of Canada Ltd (Re) (Trustee of)***, 2000 ABQB 116 at paras 25-26; ***Holt*** at para 33; ***Pelletier QB*** at para 46, citing ***Pro Swing Inc v Elta Golf Inc***, 2006 SCC 52 at para 25; ***Zochem Inc (Re)***, 2016 ONSC 958 at para 29, citing ***Re Xinergy Ltd***, 2015 ONSC 2692 at para 20.

[35] Further, section 284(2) of the *BIA* provides that the Court may refuse to do something contrary to Canadian public policy. This has been described as a "fairly narrow exception" to the mandatory requirement to recognize foreign proceedings: ***Pelletier CA*** at para 32. The Court must be mindful it is not refusing to grant an order for public policy reasons unless the public policy dictates are clear: ***Pelletier CA*** at para 32. The *BIA* does not require the foreign legislation to be consistent with our own: ***Pelletier CA*** para 33.

[36] The *BIA*, past cases (which have arisen in wide array of circumstances), and this case, illustrate that the asserted need for ancillary relief to protect debtor property and creditor interests, must be assessed in the context of various factors, non-exhaustively including:

(a) whether the applicant seeks the relief in good faith, or comes to the Court with clean hands: *BIA*, section 4.2;

(b) whether the applicant is otherwise precluded from seeking the relief, for example under principles of waiver, collateral attack, issue estoppel, *res judicata*, abuse of process, or the like;

(c) the strength of the need for the order, or the importance of the order, in preserving the debtor's property or protecting the interests of creditors;

(d) whether the order fulfils one or more of the legislative purposes or objectives of Part XIII the *BIA* (including those set out at section 267), or other legislative purposes or objectives (for example as set out in ***9354-9186 Québec inc v Callidus Capital Corp***, 2020 SCC 10 at para 40; ***Aquino v Bondfield Construction Co***, 2024 SCC 31 at para 36; and ***Scott v Golden Oaks Enterprises Inc***, 2024 SCC 32 at para 79). See also ***Pelletier QB*** at para 46; ***Purdue Pharma (Re)*** at para 28, citing ***RC Freight Canada Company (Re)***, 2023 ONSC 5513, at para 13, citing ***Re Xerium Technologies Inc***, 2010 ONSC 3974, at paras 26-27; ***Babcock & Wilcox Canada Ltd***, ***Re***, 2000 CanLII 22482 (ON SC) at para 21;

(e) the importance of principles of cooperation and comity;

(f) the impact of the relief sought on the foreign main proceedings and the legal framework applicable in the foreign main proceedings;

(g) the Court's nexus to the enterprise and its bankruptcy and insolvency, including the location of the debtor's principal operations, undertakings and assets, and stakeholders. The closer the connections the more involved the Court may be;

(h) the equitable treatment of stakeholders and, to the extent reasonably possible, the equal treatment of stakeholders regardless of the jurisdiction in which they reside: ***Purdue Pharma (Re)*** at para 28, citing ***RC Freight Canada*** at para 13, citing ***Re Xerium Technologies Inc*** at paras 26-27; ***Babcock & Wilcox*** at para 21;

(i) the potential impact of the order on other Canadian proceedings;

(j) the potential impact on or prejudice to the affected respondents or third parties;

(k) the potential impact on or prejudice to Canadian interests and rights of Canadian citizens or persons;

(l) whether the order aligns or is inconsistent with procedural or substantive Canadian law, including whether the relief would be available if Canada was the jurisdiction of the main proceeding: ***Diebold Nixdorf*** at para 38; ***Pelletier QB*** at para 53, citing ***Pro Swing***;

(m) whether the order is contrary to Canadian public policy; and

(n) the availability of alternative relief.

2. Framework for Appointment of Receivers

[37] Canadian courts have previously appointed receivers to assist in the fallout of Ponzi-type schemes or schemes with cross-border reach.

[38] For example, ***Re Titan Investments Limited Partnership, (Judicature Act)***, 2005 ABQB 637 involved a receiver appointed over the debtor corporation's assets.

[39] In ***RJ Zayed of Carlson, Caspers, Vandenburgh & Lindquist v Cook***, 2009 CanLII 72038 (ON SC), the Court recognized a United States District Court receivership order and appointed the U.S. receiver as the foreign representative under sections 269 and 270 of the *BIA*. The foreign receivership order did not provide the receiver the right to liquidate assets, but the Court noted, at para 10, "as a practical matter as receiverships unfold in [Ponzi] schemes and assets are recovered, distribution schemes will be put forward by the receiver so as to return funds to the investors, with court approval". The Court held that recognition of the foreign proceeding obviated the need for a separate parallel receivership process in Ontario.

[40] Similarly, in ***Donell v GJB Enterprises Inc***, 2011 BCSC 758, as summarized at paras 13-15, aff'd 2011 BCCA 257, the Court had previously recognized California receivership proceedings and directed assets of the debtor to be paid into court. In ***Nishiyama (Re)***, 2020 BCSC 224 at para 12, the Court appointed a receiver over the Canadian assets of a debtor under a Japanese bankruptcy under section 272(1) of the *BIA*.

[41] Some guidance can also be gleaned from jurisprudence for the granting of receivership orders under section 243(1) of the *BIA* and section 13(2) of the *Judicature Act*, RSA 2000 c J-2, as adapted for cross-border bankruptcies and insolvencies. I incorporate the summary of that legal framework set out in ***Bank of Nova Scotia v Smiling Simba Learning Academy Inc***, 2025 ABKB 11 at paras 28-32, and the list of factors at para 30 (some of which do not neatly apply to cross-border insolvencies and others of which overlap with factors already noted under Part XIII above):

(a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;

(b) the risk to the security holder, taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;

(c) the nature of the property;

(d) the apprehended or actual waste of the debtor's assets;

(e) the preservation and protection of the property pending judicial resolution;

(f) the balance of convenience to the parties;

(g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;

(h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;

(i) the principle that the appointment of a receiver is extraordinary relief, which should be granted cautiously and sparingly;

(j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;

(k) the effect of the order upon the parties;

(l) the conduct of the parties;

(m) the length of time that a receiver may be in place;

(n) the cost to the parties;

(o) the likelihood of maximizing return to the parties;

(p) the goal of facilitating the duties of the receiver; and

(q) the secured creditor's good faith, commercial reasonableness of the proposed appointment and questions of equity.

3. Using the Single Proceeding Model as a "Sword"

[42] Section 183 of the *BIA* provides this Court with (emphasis added):

> [...] such jurisdiction at law and in equity as will enable [it] to exercise original, auxiliary and ancillary jurisdiction **in bankruptcy and in other proceedings authorized by this Act** [...]

[43] See also ***PricewaterhouseCoopers Inc v Perpetual Energy Inc***, 2021 ABCA 16 at para 184 [***Perpetual Energy***].

[44] The Supreme Court of Canada has recently confirmed that section 183 of the *BIA* offers a "broad scope of authority" to deal with "most bankruptcy disputes" because anything less would "unnecessarily complicate and undermine the economical and expeditious winding up of the bankrupt's affairs": ***Peace River Hydro Partners v Petrowest Corp***, 2022 SCC 41 at para 55, citing ***Sam Lévy & Associés Inc v Azco Mining Inc***, 2001 SCC 92 at paras 27, 38.

[45] The single proceeding model, which is a shared commonality amongst bankruptcy and insolvency proceedings, reflects the central role of courts in ensuring equitable and orderly resolution of insolvency disputes: ***Century Services Inc v Canada (Attorney General)***, 2010 SCC 60 at para 22; ***Peace River Hydro*** at para 54; ***Mundo Media Ltd (Re)***, 2022 ONCA 607 at para 6. This model favours the enforcement of stakeholder rights through a centralized judicial process to "mitigate the inefficiency and chaos if each stakeholder initiated a separate claim to enforce its rights": ***Peace River Hydro*** at para 55; ***Century Services*** at para 22.

[46] In the normal course, single proceeding models are typically described as being used as a "shield", to protect *debtors* or their representatives from having to defend multiple claims in multiple proceedings: ***My Mortgage Auction Corp (Re)***, 2025 BCSC 1520[4] at para 115.

[47] However, courts have recognized that the single proceeding model can also be used for claims by or on behalf of a debtor or its creditors: ***Mundo Media*** at para 52; ***My Mortgage*** at para 115.

[48] However, there are always limits to this Court's *BIA* jurisdiction, particularly for a single proceeding model for claims by or relating to the debtor (as opposed to against the debtor). The dividing line has been addressed by the Supreme Court of Canada in ***Sam Lévy*** at paras 36, 38-40 (emphasis added):

> 36. Despite the fact that England is a unitary state without the constitutional limitations imposed by our division of powers, the courts in Canada have generally hewn ever since 1874 to the basic dividing line between disputes related to the administration of the bankrupt estate and disputes with "strangers to the bankruptcy". The principle is that **if the dispute relates to a matter that is outside**

[4] ***My Mortgage*** does not appear to be currently accessible on CanLII. It is available through the BC Courts website under 2025 BCSC 1520 or at ***My Mortgage Auction Corp (Re)***, [2025] BCJ No 4567 (QL) (BCSC).

> **even a generous interpretation of the administration of the bankruptcy, or if the remedy is not one contemplated by the Act, the trustee must seek relief in the ordinary civil courts**. [...]
>
> 38. It seems to me that the decided cases recognize that the word "Bankruptcy" in s. 91(21) of the *Constitution Act, 1867* **must be given a broad scope** if it is to accomplish its purpose. **Anything less would unnecessarily complicate and undermine the economical and expeditious winding up of the bankrupt's affairs. Creation of a national jurisdiction in bankruptcy would be of little utility if its exercise were continually frustrated by a pinched and narrow construction of the constitutional head of power**. The broad scope of authority conferred on Parliament has been passed along to the bankruptcy court in s. 183(1) of the Act, which confers a correspondingly broad jurisdiction.
>
> 39. **There are limits**, of course. If the trustee's **claim is in relation to a stranger to the bankruptcy**, i.e. "persons or matters outside of [the] Act" (*Re Reynolds*, *supra*, at p. 129) or **lacks the "complexion of a matter in bankruptcy**" (*Re Morris Lofsky*, *supra*, at p. 169) **it should be brought in the ordinary civil courts and not the bankruptcy court**. However, **claims for specific property may clearly be advanced in the bankruptcy courts** (*Re Galaxy Interiors*, *supra*, and *Sigurdson*, *supra*), as can claims for relief specifically granted by the Act (*Re Ireland*, *supra*, and *Re Atlas Lumber*, *supra*). That said, it is sometimes difficult to discern the particular "golden thread" running through the cases. [...]
>
> 40. The short answer to the "property and civil rights" argument, however, is that the appellant poses the wrong question. The issue is **whether the contractual dispute between it and the respondent trustee properly relates to the bankruptcy**. If so, the fact it also has a property and civil rights aspect does not in any way impair the bankruptcy court's jurisdiction.

[49] Where the Court has jurisdiction, a person that is not a stranger to the proceeding and that seeks to fragment the proceedings has the burden of demonstrating sufficient cause to do so: ***Sam Lévy*** at para 76; ***Envision Engineering & Contracting Inc (Re)***, 2014 ABQB 474 at para 23; ***Arrangement relatif à Bloom Lake***, 2021 QCCS 3402 at paras 54, 58, citing ***Arrangement relatif à Bloom Lake***, 2017 QCCS 284 at paras 29-33; ***Mundo Media*** at para 6; ***Alderbridge Way GP Ltd (Re)***, 2023 BCSC 1718 at para 51.

[50] Courts have expressly or impliedly used this framework when using the single proceeding model to govern claims that are not brought against a debtor, but by or relating to the debtor. For example:

(a) in ***Montréal, Maine & Atlantic Canada Co Re***, 2013 QCCS 5194, the claim related to the debtor's claim to insurance proceeds directly related to the events that led to the debtor's bankruptcy and the Court held, at para 29, that "without the shadow of a doubt, this is an asset of the debtor over which the Bankruptcy Court has jurisdiction". The insurer was not treated as a stranger to the bankruptcy;

(b) in ***Re: Essar Steel Algoma Inc Et al***, 2016 ONSC 595, in *CCAA* proceedings, the Court addressed a contractual claim by the debtor against a supplier who had purported to terminate their supply contract. The Court noted the single proceeding model and held that the claim was appropriately dealt with in Ontario in the *CCAA* proceedings, not in Ohio. The Court held the supplier was not a stranger to the *CCAA* proceedings because the debtor's claims against the supplier, and the supplier's claims against the debtor, were "completely interwoven", the supplier raised significant damage claims against the debtor, and the supplier's termination was an important factor that led to the *CCAA* proceedings;

(c) in ***Arrangement relatif à Bloom Lake***, 2021 QCCS 3402, in *CCAA* proceedings, the Court refused an application by two corporations taking the position that the Superior Court of Quebec lacked jurisdiction to issue relief against them in the *CCAA* proceedings. The corporations were not domiciled or resident in Quebec; they were headquartered and chiefly operated in Newfoundland. The Court held that it was sitting as a "national court" and that the parties were not strangers to the *CCAA* proceedings as they had attorned to the jurisdiction by filing a significant proof of claim, and because the *CCAA* process related to the recovery of a debtor asset that was being blocked by those parties; and

(d) in ***Alderbridge Way GP Ltd (Re)***, 2023 BCSC 1718, in *CCAA* proceedings, the Court directed the use of the single proceeding model to resolve claims against and by the debtor relating to the development of certain lands, rather than having the claims addressed outside the *CCAA* proceedings. The parties resisting the use of the *CCAA* proceedings were not strangers to the *CCAA* proceedings because all claims involved the debtor and had "considerable interconnection" with the *CCAA* proceedings.

4. Single Proceeding Models for Clawback Claims Arising out of Ponzi Schemes

[51] The nature of a Ponzi scheme was discussed over 20 years ago by Justice Hawco in ***Titan*** at para 8:

> [8] Ponzi schemes are fraudulent investment schemes whereby individuals are enticed by a con-man or fraudster to make investments in an operation promising an unreasonably high rate of return. Once the first few investments are made, subsequent investors are enticed to invest partly through reported gains and partly through the high payouts to earlier investors. Ultimately, the con-man either spends or disappears with the remaining money, or the scheme collapses on itself as funds are exhausted by payouts to earlier investors.

[52] For similar definitions or summaries, see ***My Mortgage*** at para 57, citing the definition of a Ponzi scheme from the United States Securities and Exchange Commission, as adopted in ***Boale, Wood & Company Ltd v Whitmore***, 2017 BCSC 1917 at para 45 and ***Kriegman*** at para 11; ***Millard v North George Capital Management Ltd***, 2006 CanLII 41287 at para 11.

[53] ***In the Matter of the Bankruptcy of Douglas Grozelle***, 2026 ONSC 758 at para 44, the Court summarized the hallmarks of a fraudulent Ponzi scheme as:

> i. Payment of purported returns to investors from funds contributed by new investors;
>
> ii. The lack of a legitimate business or investment activity by the Ponzi scheme operator;
>
> iii. Promises to investors of high returns with little risk;
>
> iv. The operator's focus on attracting new investments especially through close personal connections; and
>
> v. A significant flow or churn of funds in and out of the operator's accounts.

[54] In ***Titan***, although Justice Hawco did not expressly address that he was using a single proceeding model, that is in fact what he did. He heard and decided a summary application brought by the receiver of the debtor (and certain unpaid investors) to determine whether redemptions paid to certain investors could be challenged under the *FPA*, the *Statute of Elizabeth, 1571* (UK), 13 Eliz 1, c 5, or under section 95 of the *BIA*. He made a single declaration addressing all of the redemptions made under the Ponzi scheme.

[55] More recently, two courts have adopted the single proceeding model for Ponzi-scheme clawback claims in the context of Canadian bankruptcy proceedings, through the use of a bankruptcy-administered two-staged claims process.

[56] In ***My Mortgage***, Justice Fitzpatrick, relying in part on ***Titan***, approved a summary claims process under the *BIA* for the determination of the trustee's clawback claims against the Ponzi scheme's net winners (some of whom resided in other Canadian provinces or in the United States). The claims were made and liability adjudicated summarily on several bases, including under the *Fraudulent Conveyance Act*, RSBC 1996, c 163, as unjust enrichment, as monies "had and received", and under section 95 of the *BIA*. Issues related to the calculation of the amount of the claims (including the calculation of the value of the amounts received, potential set-off claims, potential for consolidation of claims in determining who was truly a "net winner", and certain tax issues) were all deferred to a second stage of the process.

[57] In ***My Mortgage***, Justice Fitzpatrick noted that it was open to the trustee to commence separate actions (much as the Foreign Representative has done in this case). However, she highlighted how this strategy often leads to significant delays, inefficiencies and "exorbitant" costs: ***My Mortgage*** at paras 129-134, citing ***Jastram Properties Ltd v Tan***, 2019 BCSC 475; ***Jastram Properties Ltd v Tan***, 2020 BCSC 1610; ***Jastram Properties Ltd v HSBC Bank Canada***, 2024 BCSC 1833; ***Jastram Properties Ltd v Tan***, 2021 BCSC 2432 at paras 29-35; and ***Doyle Salewski Inc v Scott***, 2019 ONSC 5108; var'd ***Golden Oaks Enterprises Inc (Trustee of) v Scott***, 2022 ONCA 509; aff'd ***Scott v Golden Oaks Enterprises Inc***, 2024 SCC 32. These cases were contrasted with the more expedient approach taken in ***Titan***.

[58] In ***Grozelle***, Justice Myers adopted the ***My Mortgage*** two-stage single proceeding model for Ponzi-scheme clawback claims in another Ponzi scheme case. The Court summarily assessed

liability and limitations under the *Assignments and Preferences Act*, RSO 1990, c A.33, unjust enrichment and under the *Fraudulent Conveyances Act*, RSO 1990, c F.29. The respondents raised numerous objections to the process, all of which were rejected. It is unclear whether ***Grozelle*** involved any respondents resident outside of Ontario. However, it appears that the trustee may have previously commenced separate civil litigation against some of the net winners (as referenced in ***My Mortgage*** at para 110).

[59] The above cases reflect the flexibility necessary to adapt bankruptcy and insolvency proceedings with commercial realities associated with modern, digital-based Ponzi schemes that are easily accessible all over the world.

5. Framework for Addressing Multiplicity of Proceedings

[60] It is axiomatic that a multiplicity of proceedings is to be avoided. Accordingly, courts have the power and inherent jurisdiction to stay duplicative proceedings to avoid multiplicity: *Judicature Act*, section 8; ***AGI SureTrack, LLC v OPISystems Inc***, 2025 ABKB 609 at paras 84-90; ***Waud v Dawson-Dixon***, 2023 ABKB 158 at paras 15-16. A stay of duplicative (or potentially duplicative) proceedings is inherent in virtually every insolvency and bankruptcy.

[61] Under the *Rules* and section 8 of the *Judicature Act*, in determining whether to grant a stay, the Court considers the following questions (along with the goals of efficient dispute resolution, management of court resources, and judicial economy):

> (1) Are the issues in the action sought to be stayed substantially the same as the issues in another action?
>
> (2) Would the continuance of the action work an injustice because it would be oppressive or vexatious to one of the parties or an abuse of the Court's process?
>
> (3) Would the stay cause an injustice to one of the parties?
>
> ***AGI Sure Track*** at paras 88-89; ***Waud*** at para 18, citing ***Alberta v Alberta Union of Provincial Employees***, 1984 ABCA 130 at paras 9-17; ***1499925 Alberta Ltd v NB Developments Ltd***, 2023 ABKB 114 at para 99 (and cases cited therein); ***UCANU Manufacturing Corp v Calgary (City)***, 2015 ABCA 22 at para 7.

[62] The issue of staying proceedings to avoid multiple proceedings sometimes arises where proceedings have been commenced (or could be commenced) in two different jurisdictions and the court considers which jurisdiction is the *forum conveniens*. Those situations are analogous to this case, where the Liquidators could continue with the Clawback Actions or could potentially, through the Foreign Representative, seek the determination of the same claims under a Claims Process under a *BIA* receivership.

[63] When considering the appropriate forum as between two competing fora, courts consider a constellation of factors, including (a) the comparative convenience and expense for parties and witnesses; (b) the applicable law; (c) the desirability of avoiding multiplicity of legal proceedings; (d) desirability of avoiding conflicting decisions; (e) enforcement of an eventual judgment; and the (f) fair and efficient working of the Canadian legal system, all of which can also involve

consideration of (g) the location of the parties and witnesses; (h) the cost of transferring to a new jurisdiction or declining a stay; (i) the impact of a transfer on the conduct of the litigation or on related or parallel proceedings; and (j) loss of juridical advantage: ***AGI SureTrack*** at paras 37-38, citing ***Club Resorts*** at paras 105, 110-112; ***Deadman v Jager Estate***, 2019 ABCA 481 at para 30.

[64] It is usually a defendant that seeks a stay of proceedings in favour of another process, however, it is possible for the Court to grant such relief to a plaintiff seeking to stay its own action: ***Waud*** at para 19. However, the Court will consider whether it is more appropriate to require the plaintiff to simply discontinue its duplicative process: ***Waud*** at para 29.

[65] I turn to this case.

B. Assessment and Decision

1. Positions

[66] Other than the Foreign Representative, only the five Respondents took a position in opposition to the Application (or otherwise).

[67] The Foreign Representative acknowledges that the primary purpose of the appointment of the Proposed Receiver is to run a Claims Process. It relies on ***My Mortgage*** and ***Grozelle*** as examples of courts approving a single proceeding model claims process for clawback claims against investors in Ponzi schemes. The Foreign Representative argues that the Clawback Actions have been delayed by various procedural issues and jurisdictional arguments. The Liquidators have incurred legal expenses exceeding $1 million in three years and the unresolved Clawback Actions have not yet proceeded to Part 5 questioning under the *Rules*. The Foreign Representative argues that the balance of convenience and cost to the parties supports the appointment of the Proposed Receiver because the Claims Process is expected to be completed within 12 months. It also notes that Bitcoin is complex and easily dissipated. The Foreign Representative argues that the order is necessary for the protection of MTI's property in Canada and, therefore, MTI's creditors.

[68] The Respondents are:

(a) Martin Manseau (**Manseau**), a Defendant in action number 2401-04792 (**Manseau Action**). Manseau is a Quebec resident. I understand that in 2024 he brought an application to stay or strike the Manseau Action in favour of Quebec, but then he filed a statement of defence in the Alberta action in February 2025. The parties have exchanged affidavits of records and Part 5 questioning for discovery has not yet occurred;

(b) Jean Rivest (**Rivest**) and Cassandra Moyen also known as Jean-Charles Moyen (**Moyen**), two of the Defendants in action number 2401-04780. Both were noted in default and default judgment has been granted against Rivest for over C$28 million. I understand there is an application outstanding to set aside their noting in default to permit a defence to be filed;

(c) Alan Cunningham (**Cunningham**), a Defendant in action number 2401-04754. He filed a statement of defence but has not yet delivered his affidavit of records; and

(d) Sergio Pablos Velez, the defendant in the Pablos Velez Action which is currently stayed by the Farrington Order.

[69] The Respondents argue that ***My Mortgage*** is distinguishable because in ***My Mortgage*** the trustee did not also file numerous civil actions (whereas the Foreign Representative elected to pursue the Clawback Actions and, they argue, has waived its right to proceed with a Claims Process); and in ***My Mortgage*** there was no prejudice to investors (whereas the Respondents are prejudiced through thrown-away costs, delay and loss of their jurisdictional arguments). They also argue that the test to appoint a receiver is not met.

[70] The Respondents argue that the Application is a collateral attack on the Farrington Order and Simard Decision, and is barred by waiver, *res judicata* and issue estoppel. They argue the Liquidators must continue the process they already started and should not be allowed to change tack in the middle of the Clawback Actions. Finally, they challenge the Foreign Representative's assertion that the Proposed Receiver has any special expertise with Bitcoin or that any special expertise is required in this case because the Liquidators are, in effect, only pursuing monetary relief (not the return of Bitcoin).

[71] If the Application is granted, the Respondents seek solicitor-own client (full indemnity) costs of the Clawback Actions.

2. This Court Has *BIA* Jurisdiction to Appoint A National Receiver Upon Application of A Foreign Representative

[72] Four of the Respondents acknowledge that the Court generally has the jurisdiction to appoint a trustee as receiver.[5] Pablos Velez argues the Court has no jurisdiction.

[73] As noted above, the Court has a broad power to appoint a trustee as receiver under section 272 of the *BIA* and to grant a receivership order under section 243. It also has the broad jurisdiction in section 183 of the *BIA* to enable it to exercise its original, auxiliary and ancillary jurisdiction in bankruptcy and "other proceedings authorized" by the *BIA*.

[74] I agree with the Foreign Representative that the Court has statutory jurisdiction to appoint a trustee as receiver with the power to act nationally in Canada: ***Saskatchewan (Attorney General) v Lemare Lake Logging Ltd***, 2015 SCC 53 at paras 30-32.

[75] If appointed, the Proposed Receiver's mandate under a Claims Process would, if approved, be distinguished from ordinary civil litigation pursued by the Foreign Representative in the form of the Clawback Actions. Provided that a claims process involves claims within the overall statutory jurisdiction of the Court under the *BIA*, as stated in ***Bloom Lake***, the Court would be overseeing a Claims Process as a "national court" operating under its national, statutory *BIA* jurisdiction. This is effectively what happened in ***Tron Construction (Re)***, 2022 SKKB 203, which provided for a Saskatchewan-court managed bankruptcy claims process relating to construction liens for work done in Saskatchewan *and* in Ontario, even though some of the claims were for work done outside of Saskatchewan by claimants with no presence in Saskatchewan.

[5] Joint Brief of Manseau, Rivest, Moyen and Cunningham at para 51.

[76] In these circumstances, if the Proposed Receiver is appointed and a Claims Process is found to involve claims under *BIA* jurisdiction, there would be no question that the Court has jurisdiction. Of course, that does not necessarily mean the Court must exercise that jurisdiction. It may be open to the Court to decline to exercise its *BIA* jurisdiction, provided the Court complies with section 175 of the *BIA*.

3. The Foreign Representative is Not Precluded from Bringing the Application

[77] The Respondents do not go so far as to allege that the Foreign Representative is not acting in good faith. I find that the Foreign Representative is acting in good faith based on his belief that a national Claims Process is the most efficient, expedient, cost-effective and fair process to support the Foreign Proceedings for the benefit of all creditors.

[78] As noted above, the Respondents' main argument is that, for a number of reasons, the Foreign Representative is precluded from now seeking to engage the Court's *BIA* jurisdiction because it already started the Clawback Actions, pursued them for two years, and is bound by the Farrington Decision and the Simard Decision. Their argument is akin to the adage that the Liquidators made their own bed and must now lie in it.

[79] I find that the Foreign Representative is not precluded from seeking the relief it seeks just because it has engaged other recovery efforts first. The Recognition Order provides him permission to apply to the Court for advice and direction.

[80] As noted above, a foreign representative is not required to use all the tools available to it under the *BIA*, immediately or otherwise. Trustees, receivers and liquidators as court-officers, are encouraged to take a pragmatic approach to deal with matters expeditiously and efficiently to maximize recovery without expensive litigation, and should not be unduly criticized for doing so: ***My Mortgage*** at para 26, 101, 134; ***Samji (Re)***, 2013 BCSC 2101 at paras 29-37; ***Grozelle*** at para 112, 122-128. The same can apply to a court-recognized foreign representative.

[81] However, if a foreign representative starts down one path, and then later decides that there is a different preferable path, it must ensure it does not breach arrangements already agreed, does not cause substantive prejudice in a way that cannot be addressed with costs, does not create procedural unfairness, and does not abuse court processes.

[82] I briefly address the Respondent's positions below.

a. No Collateral Attack

[83] Under the doctrine of collateral attack, a judicial order pronounced by a court of competent jurisdiction should not be brought into question in subsequent proceedings except those provided by law for the express purpose of attacking it: ***Wilson v The Queen***, 1983 CanLII 35 (SCC), [1983] 2 SCR 594, at 599; ***Toronto (City) v Canadian Union of Public Employees, Local 79***, 2003 SCC 63 at para 33; ***Danyluk v Ainsworth Technologies Inc***, 2001 SCC 44 at para 20; ***Inter Pipeline Ltd v Teine Energy Ltd***, 2025 ABCA 368 at para 9; ***Piikani Nation v McMullen***, 2020 ABCA 366 at para 41. A collateral attack is one "made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment.": ***Inter Pipeline*** at para 9; ***Ernst & Young Inc v Central Guaranty Trust Company***, 2006 ABCA 337 at para 47.

[84] I disagree with the Respondents' position that the Application is a collateral attack on the Farrington Order and the Simard Decision.

[85] The Farrington Order stayed the Pablos Velez Action because the Alberta Court of King's Bench did not have jurisdiction *simpliciter* over a civil action under the *Rules* or common law, due to a lack of real and substantial connection of Pablos Velez or the action to Alberta. However, because it was not before Applications Judge Farrington, the Farrington Order did not address the different question of the Court's separate jurisdiction under the *BIA* to appoint a trustee as receiver and to run a *BIA* claims process. The Application is not, therefore, a collateral attack on the Farrington Order.

[86] I find this situation distinguishable from ***British Columbia (Workers' Compensation Board) v Figliola***, 2011 SCC 52 [***Figliola***], relied on by Pablos Velez. In that case, the Supreme Court of Canada interpreted specific statutory provisions in the human rights administrative tribunal context and held that the complainants were attempting to collaterally relitigate the issues that had already been decided in a different forum. The Farrington Order did not decide any of the substantive claims against the Defendants, or the question of *BIA* jurisdiction.

[87] The Simard Decision was also dealing with a different issue than the Application. Justice Simard decided that he could not, without evidence, override the jurisdiction *simpliciter* requirements for civil actions under the *Rules*, simply because this *BIA* Action recognizes the Foreign Proceedings. In effect, Justice Simard decided that, where a recognized foreign representative decides to engage ordinary provincial civil litigation processes, it must follow the applicable rules and laws governing those processes. The issue of the appointment of a trustee as receiver to run a clawback Claims Process under the Court's statutory *BIA* jurisdiction was not before Justice Simard. The Application is not a collateral attack on the Simard Decision.

[88] If successful, the Application or a future order may very well render the appeals of the Farrington Order and the Simard Decision moot, but that does not necessarily equate to a collateral attack. I find that the Foreign Representative is not barred by the doctrine of collateral attack.

b. No *Res Judicata*

[89] *Res judicata* has two branches, issue estoppel and cause of action estoppel. Cause of action estoppel is not possibly engaged here because it precludes the litigation of a cause of action which was adjudged in a previous court proceeding: ***Sutherland v Sutherland***, 2023 ABCA 121 at para 13, citing ***Ernst and Young*** at para 29. There has been no determination of any cause of action against the Defendants.

[90] The issue estoppel branch of *res judicata* was summarized by the Supreme Court of Canada in ***Toronto (City)*** at para 23 (emphasis in original):

> Issue estoppel is a branch of *res judicata* (the other branch being cause of action estoppel), which precludes the relitigation of issues previously decided in court in another proceeding. For issue estoppel to be successfully invoked, three preconditions must be met: (1) the issue must be the same as the one decided in the prior decision; (2) the prior judicial decision must have been final; and (3) the parties to both proceedings must be the same, or their privies (*Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 S.C.R. 460, 2001 SCC 44, at para. 25, per Binnie J.)...

[91] See also: ***Sutherland*** at para 13; ***Konkolus v Balanko***, 2024 ABCA 134 at para 16 (footnote 31); ***Ernst and Young*** at paras 29-31.

[92] For the same reasons as above, issue estoppel is not made out. Neither the Farrington Order nor the Simard Decision addressed the issue raised in this Application, namely the jurisdiction of the Court to appoint a trustee as receiver under the *BIA*, in the context of its cooperation with recognized foreign insolvency proceedings.

c. No Waiver

[93] I summarized the doctrine of waiver in ***Armstrong v Gula***, 2024 ABKB 358 at para 65:

> [65] Waiver of a legal right requires (1) full knowledge of the right and (2) an unequivocal and conscious intention to abandon it: ***1242311 Alberta Ltd v Tricon Developments Inc***, 2021 ABCA 418 at paras 22, 30; ***Saskatchewan River Bungalows Ltd v Maritime Life Assurance Co***, [1994] 2 SCR 490 at 500, 1994 CanLII 100; [***High Tower Homes v Stevens***, 2014 ONCA 911][***High Tower CA***] at para 43. The intention to relinquish the right must be communicated, which can be formal, informal or inferred from conduct, with the overriding consideration being whether one party communicated to the other party a clear intention to waive a right: ***High Tower CA*** at para 43; ***Technicore Underground Inc v Toronto (City)***, 2012 ONCA 597 at para 63; ***Fortress Carlyle Peter St Inc v Ricki's Construction and Painting Inc***, 2019 ONCA 866 at para 34. [...]

[94] If there is no direct evidence of intention, then the conduct of the party, viewed objectively, may be considered because a person generally intends the natural consequences of his or her acts: ***1242311 Alberta Ltd v Tricon Developments Inc***, 2021 ABCA 418 at paras 23, 30.

[95] Even if the stringent requirements of a waiver have been met, a court can refuse relief if granting such relief would be unjust: ***Jacobi v Jacobi***, 2017 ABCA 307 at paras 20-21; ***Grant v Jovic***, 2005 ABQB 323 at para 70.

[96] There is no evidence that the Foreign Representative unequivocally or consciously intended to abandon its rights to seek ancillary relief from this Court under the Recognition Order or Part XIII of the *BIA*. Further, I find that the fact that the Liquidators commenced the Clawback Actions is insufficient to infer such an intention by conduct.

[97] Restricting a court-recognized officer in the way suggested by the Respondents would be inconsistent with the flexibility and real-time decision making often required in bankruptcy and insolvency proceedings.

[98] The Application is not precluded based on the doctrine of waiver.

d. No Other Estoppel

[99] The jurisprudence discloses six types of estoppel: estoppel by representation of fact (sometimes referred to as estoppel by conduct), proprietary estoppel, promissory estoppel, estoppel by convention, estoppel by deed and estoppel by negligence: ***Armstrong*** at para 61, citing ***Ryan v Moore***, 2005 SCC 38 at para 52; ***Northern Sunrise County v Virginia Hills Oil Corp***, 2019 ABCA

61 at para 30; ***Scotsburn Co-Op Services v WT Goodwin Ltd***, 1985 CanLII 57 (SCC) at para 26; ***Jelonek v Monterrosa-Renaud***, 2022 ABKB 738 at para 25. Promissory estoppel is also sometimes referred to as equitable estoppel: ***Highfield Place Inc v 233985 Alberta Ltd***, 2003 ABCA 261 at para 4.

[100] Some of the Respondents rely on estoppel by conduct and equitable estoppel.

[101] As per ***Armstrong***, at para 63, with respect to estoppel by representation of fact/estoppel by conduct:

> [63] Estoppel by representation requires a positive representation made by the party whom it is sought to bind, with the intention that it shall be acted on by the party with whom the representor is dealing, the latter having so acted upon it as to make it inequitable that the party making the representation should be permitted to dispute its truth, or to do anything inconsistent with it: ***Ryan*** at para 5. Estoppel by conduct has been described as requiring evidence of a representation, reliance and detriment: ***Northern Sunrise*** at para 30; ***Scotsburn*** at para 26.

[102] As per ***Armstrong***, at para 64, with respect to promissory estoppel/equitable estoppel:

> [64] The party invoking promissory estoppel must prove (1) that the other party made, by virtue of word or deed, a promise or assurance intended to alter their existing legal relationship and to be acted upon by the party receiving the assurance; and (2) the recipient of the assurance acted upon it in a manner which changed his or her position: ***Maracle v Travellers Indemnity Co of Canada***, 1991 CanLII 58 (SCC); ***B & R Development Corporation Ltd v Trail South Developments Inc***, 2012 ABCA 351 at paras 22-23, leave to appeal ref'd [2013] SCCA No 34; ***Blue Hill Capital Corporation v Daon Property Corporation***, 2014 ABCA 282 at para 18; ***High Tower CA*** at paras 57-58. The promise can be inferred from the circumstances, but must be unambiguous: ***High Tower CA*** at para 58, citing ***Engineered Homes Ltd v Mason***, 1983 CanLII 142 (SCC). The party making the promise must have knowledge of the facts giving rise to the legal rights that the promise affects: ***Trial Lawyers Association of British Columbia v Royal & Sun Alliance Insurance Company of Canada***, 2021 SCC 47 at para 24; ***Jelonek*** at para 26.

[103] I find that the Respondents have failed to establish, on the record before me, that the Foreign Representative ever represented or promised (whether expressly or impliedly) that it would not pursue the remedies it now seeks under Part XIII of the *BIA*, or that the Respondents acted on such representations or promises in responding to the Clawback Actions. The filing and response to civil actions is insufficient to bind the Foreign Representative in the manner sought.

[104] This matter is distinguishable from ***Nash v CIBC Trust***, [1996] OJ No 3940 (ONCJ) (QL) relied on by the Respondents. In that case, the Court summarily dismissed a claim by plaintiffs for damages against an entity for applying to appoint a receiver, in part because the plaintiffs had participated in those very receivership proceedings for over 5 years and had never challenged the receivership order. That is a vastly different situation than the matter before me.

[105] The Foreign Representative is not barred by estoppel as argued by the Respondents.

e. Abuse of Process Can Be Avoided

[106] Abuse of process engages the "inherent power of the court to prevent the misuse of its procedure" and where allowing the litigation to proceed would nonetheless violate the principles of judicial economy, consistency, finality and the integrity of the administration of justice: ***Toronto (City)*** at para 37; ***Condominium Corporation No 0828219 v Carrington Holdings Ltd***, 2023 ABCA 222 at para 10; ***Figliola*** at para 33.

[107] Truly duplicate proceedings are not permitted and are an abuse of process: ***Richard v John's Sandblasting & Painting Ltd***, 2026 ABKB 44 at para 10; ***AGI SureTrack*** at para 78; ***Waud*** at paras 15-16, citing ***Danyluk*** at para 16. Multiple overlapping proceedings can be abusive but are not always so: ***AGI SureTrack*** at para 82.

[108] The Foreign Representative does not appear to seek to run two duplicative or abusive processes. Its proposed form of order seeks a stay of the Clawback Actions pending further Court order. Accordingly, I am satisfied that, if the Application is otherwise warranted, the Court can craft an order that avoids abusive duplication.

[109] The Application is not precluded based on the doctrine of abuse of process.

4. The Asserted Need for the Appointment of a Trustee as Receiver

[110] The Foreign Representative's main argument for the need to appoint the Proposed Receiver is so that it can run an efficient Claims Process. It also relies on the Proposed Receiver's expertise in the recovery of Bitcoin and to avoid its waste.

[111] I find the latter argument unpersuasive for a number of reasons. Any transfer of Bitcoin to the Defendants occurred years ago. The Foreign Representative did not seek the appointment of a trustee as receiver when it obtained the Recognition Order. To my knowledge, the Liquidators have never applied for a preservation order in any of the Clawback Actions. The Defendants have had ample opportunity to transfer or liquidate any Bitcoin they may have received, if they were inclined to do so. It is not clear that any Bitcoin allegedly received by any of the Defendants remains in their possession or in Canada. The Foreign Representative's counsel candidly acknowledged that the Liquidators are content to receive equivalent value in Canadian dollars rather than *in specie* Bitcoin (and has already done so through default judgments).

[112] However, I find the first argument to be quite persuasive. Although the Foreign Representative has not provided me with concrete time and cost estimates comparing the two scenarios (continuing with the now-case-managed Clawback Actions versus a court-supervised summary Claims Process administered by the Proposed Receiver), I am satisfied that a Claims Process would likely be significantly more efficient, faster, and less costly than prosecuting the Clawback Actions in Alberta (or in other provinces in which investors may reside).

[113] I agree that prosecuting numerous lawsuits to their conclusion, in this context, has proven to be (or will prove to be) "inevitably characterized by delay and costs", all to the detriment of MTI's creditor pool as a whole: ***My Mortgage*** at para 128-129; ***Grozelle*** at para 90. I say this notwithstanding this Court's efforts to get civil actions to trial faster, as recently summarized in ***Intellimedia Limited Partnership v Jawad***, 2026 ABKB 247 at para 35. It is simply not feasible for the Clawback Actions to be brought to resolution within 12 months or anything close to that.

[114] To protect MTI's property and all of its creditors, to honour this Court's obligations to maximize its cooperation with the Foreign Representative, and to foster cooperation and comity with the Foreign Court and the Foreign Proceedings, I find there is strong need for the Foreign Representative and the Court to explore alternative processes to the Clawback Actions.

5. The Court has Jurisdiction to Direct a *BIA* Clawback Claims Process in this Case

[115] I find that the Court has jurisdiction under the *BIA* to approve a clawback Claims Process as proposed by the Foreign Representative.

[116] This is confirmed by ***My Mortgage***, ***Grozelle*** and ***Titan***. I recognize that these cases are different, including because they were not ancillary to a foreign main proceeding, however, none of the Respondents argued that these distinguishing factors precluded the use of a Claims Process in these circumstances.

[117] It cannot be said on the record before me that any of the Defendants in the Clawback Actions are "strangers" to MTI's insolvency or liquidation process as contemplated by ***Sam Lévy*** and related cases cited earlier.

[118] Although it is unclear whether or which Defendants have participated in the Foreign Proceedings or any related claims process as creditors of MTI, at least some of the Respondents (including Moyen, Rivest and Pablos-Velez) assert that they are themselves entirely victims of MTI's collapse.[6]

[119] Further, and in any event, it is the alleged payments to investors, like the Defendants, as part of or in furtherance of the Scheme, that led to MTI's failure. The Defendants' involvement in the Scheme (whether intentional, innocent or otherwise), albeit in at best a minor role in the overall Scheme, is significantly interwoven with the MTI insolvency and liquidation proceedings. Based on the information I have before me, they are not strangers to MTI's insolvency. This finding founds this Court's national *BIA* jurisdiction.

6. A *BIA* Claims Process has *Prima Facie* Merit

[120] I have considered the various interrelated factors noted above respecting Part XIII of the *BIA*, appointing a receiver, using a single proceeding model as a sword to facilitate Clawback Claims in response to Ponzi scheme collapses, and addressing multiplicity of proceedings. Those factors all *prima facie* support the Foreign Representative's Application. I summarize some important considerations below.

[121] The Foreign Representative acts in good faith and is exercising the rights under the Recognition Order to come back to the Court for further relief. Having said that, despite the Foreign Representative's characterization as seeking to follow a "novel and new" path, I find it could likely have avoided delay and expense to all stakeholders had it brought the Application at the same time as the Recognition Order or before proceeding with the Clawback Actions.

[6] Respondents' Joint Brief at para 46 and footnote 48. See also the March 17, 2025 affidavit of Pablos Velez in the Pablos Velez Action at para 8.

[122] The vast majority of Defendants, including at least ten that have defended the Clawback Actions, have not objected to the Application.

[123] As noted above, there is a strong need for a *BIA* Claims Process. It would be more efficient, could be completed much sooner likely at less cost, and could be equitable and fair so as to allow Defendants to raise their substantive positions. ***My Mortgage*** and ***Grozelle*** provide a template process that can be used as a starting point and adjusted as needed.

[124] A *BIA* Claims Process would simplify enforcement of the end result of the process. An Alberta judgment granted in the Clawback Actions would have to be enforced under applicable reciprocal enforcement legislation in the Defendant's home jurisdiction, if any, or via a claim to enforce the judgment. A judgment granted under a *BIA* claims process is enforceable in Alberta and throughout Canada: *BIA*, section 188(1). Further, section 188(2) of the *BIA* provides for a streamlined process by which this Court could seek aid of the courts in other provinces if needed.

[125] The Respondents have not argued or established any material or substantive prejudice, harm or loss of juridical advantage if they had to participate in a Claims Process. They have also not established any significant potential impact or prejudice to Canadian interests or the rights of Canadian citizens.

[126] The Respondents' costs incurred to-date in the Clawback Actions could be addressed as part of the Claims Process. This could address the inconvenience and any harm associated with the Clawback Actions to date.

[127] Further, being compelled to participate in a *BIA* claims process in another province is often the result in bankruptcies and insolvencies. In ***Sam Lévy*** at para 26, and ***PetroWest*** at para 55, the Supreme Court of Canada has more recently reinforced the following statement of Anglin J in ***Stewart v Lepage***, 1916 CanLII 626 (SCC), 53 SCR 337 at 349, from over 100 years ago (which remains apt):

> No doubt some inconvenience will be involved in such exceptional cases as this where the winding-up of the company is conducted in a province of the Dominion far distant from that in which persons interested as creditors or claimants may reside. But parliament probably thought it necessary in the interest of prudent and economical winding-up that the Court charged with that duty should have control not only of the assets and property found in the hands or possession of the company in liquidation, but also of all litigation in which it might be involved. The great balance of convenience is probably in favour of such single control though it may work hardship in some few cases; and

[128] I have found that this Court has jurisdiction under the *BIA*. The Recognition Order was properly obtained in Alberta, has been extant since 2023, and was never appealed or challenged. No one has suggested Alberta is not the appropriate forum for the *BIA* proceedings or requested that the *BIA* proceedings be transferred to another bankruptcy district as contemplated by section 187(7) of the *BIA*.

[129] Any argument that the Foreign Representative should be compelled to continue litigating in Alberta, or should have to file new civil actions in other provinces where investors reside, would

appear to me to be a "litigation strategy" to "delay and frustrate the recovery of funds": ***My Mortgage*** at para 129.

[130] A summary Claims Process run by a licensed trustee appointed as receiver, as a court officer under the Court's supervision, also makes practical sense. It ensures the court officer has appropriate powers and recourse to the Court for advice and directions. It maximizes opportunities for the preservation of MTI's assets in Canada, and related Clawback Claims. It best ensures cooperation, comity and coordination with the Foreign Proceedings in a way that cannot be done solely through the Clawback Actions (notwithstanding they are now in case management).

[131] At this point, the balance of convenience favours the appointment of the Proposed Receiver, but not exactly as requested at this time. The Application effectively seeks a pre-approval of a Claims Process that has not been sufficiently detailed in the Application materials. I am not confident that all potential complexities of the Claims Process have been explored. Before the Clawback Actions are abandoned completely in favour of a *BIA* Claims Process, more detail is required (as addressed below).

7. The Foreign Representative Has Not Yet Provided Sufficient Information

[132] During oral submissions, I asked the Foreign Representative's counsel several questions about the proposed Claims Process. In most instances, a detailed response was not possible because the Claims Process details had not been worked out. The Application was presented as a first step to set the stage for the Proposed Receiver to do its work and propose a process. Generally, the idea is that a Claims Process would be based on the process adopted in ***My Mortgage*** and ***Grozelle***. In my view, these cases provide a good template, but they were in the context of existing Canadian bankruptcy proceedings, not a recognized Foreign Proceeding with a proposed trustee as receiver appointed.

[133] Sometimes the details matter. A party proposing a *BIA* claims process as ancillary relief in support of a foreign proceeding must provide sufficient detail for the Court and affected parties to assess it against the many factors noted earlier in these Reasons. This is particularly so in this case where the Foreign Representative first chose to engage the Court's ordinary civil procedures, caused the incurring of significant time and resources by stakeholders and Defendants, and now is asking the Court to approve a significant change of approach.

[134] In my view, the Foreign Representative and Proposed Receiver must provide their precise proposed Claims Process, together with appropriate additional evidentiary context, for the Court to make a final decision on the path forward. At a minimum, the Foreign Representative should address and, where applicable, explain its rationale for:

(a) the estimated cost of the Claims Process, versus the estimated cost of pursuing the Clawback Actions, and who will bear those respective costs;

(b) how the Clawback Actions will be addressed. Is it proposed that they are stayed indefinitely, or will they be discontinued?

(c) how default judgments will be addressed. Will the related Clawback Claims be part of the Claims Process and, if so, will the default judgments be set aside by consent?

(d) how the pleadings filed, or records produced, in the Clawback Actions will be used in the Claims Process, if at all. Is any relief from the implied undertaking contemplated?

(e) how the costs already incurred by the Foreign Representative and the Defendants in the Clawback Actions will be addressed. Further, who will bear those costs?

(f) better information about the status of the Foreign Proceedings and orders made in those proceedings, or related proceedings. Are there any other orders in the Foreign Proceedings that the Foreign Representative anticipates will have to be recognized or implemented by this Court? Any such matters should be addressed;

(g) the specific claims processes being used in the Foreign Proceedings or possibly in other jurisdictions. This information is required to assess whether the Defendants are being treated reasonably equitably *vis a vis* other investors in similar circumstances, to consider whether the approach is consistent with or different from the Liquidator's approach in the Clawback Actions, and to ensure that a Canadian Claims Process will complement and not frustrate the Foreign Proceedings;

(h) the legal bases for liability as will be asserted in the Claims Process. This may require, among other things, an assessment of the Court's jurisdiction to provide the relief sought, the right of a trustee appointed as receiver to advance the claim, and an assessment of the applicable law. In ***Titan***, the court summarily addressed the merits of the receiver's positions under provincial legislation. In ***My Mortgage*** and ***Grozelle***, the courts summarily assessed liability in the first stage of a two-stage process;

(i) if Bitcoin cannot be recovered *in specie*, the proposed mechanics and timing for calculation of the claim, including valuation of any Bitcoin received by Defendants, how investors are being classified, how the claims are to calculated, and whether any tax or other issues must be addressed;

(j) how the legal or factual defences raised by the Defendants will be addressed;

(k) the contemplated process in the event a claim cannot be determined summarily, including the bankruptcy district in which any court determination will take place;

(l) whether or how French language processes for Defendants will be accommodated, if requested; and

(m) the contemplated process for administration or distribution of any funds recovered in the receivership, including how this will be coordinated with the Foreign Proceedings.

[135] Without more information, I cannot provide a blanket approval for the Proposed Receiver to administer a Claims Process. I suspect that the Respondents' opposition to the Application may very well also have been based, at least in part, on the lack of detail to support the Application.

[136] At this stage, I find it is only appropriate to appoint the Proposed Receiver with the power to investigate and propose a Claims Process. A similar approach was used in ***Tron Construction***, at paras 11, 87-101.

[137] The Foreign Representative and/or Proposed Receiver should consult with the Defendants about any future proposed Claims Process to see if consensus can be reached.

[138] This decision is entirely without prejudice as to whether any proposed Claims Process based on ***My Mortgage***, or some other path forward, will ultimately be approved.

8. Conclusion and Appropriate Order

[139] For the reasons set out above, I find the proposed form of order presented by the Foreign Representative is necessary to protect MTI's property and the interests of its creditors, but with these changes:

(a) in paragraph 2, change the last sentence to the following:

> For additional clarity, the Affected Property is deemed to include all cryptocurrencies disposed of by the Debtor to the Canadian Investors, or their Canadian dollar equivalent, and all claims against Canadian Investors related to cryptocurrencies disposed of by the Debtor to Canadian Investors.

(b) in paragraph 3, change "Property" to "Affected Property" for consistency;

(c) replace paragraph 3(a) with the following:

> (a) investigate and propose for court approval a claims process in respect of the Affected Property for Bitcoin transferred or payments made by the Debtor to Canadian Investors, pursuant to further Order of this Court (the "**Claims Process**"), and exercise any powers reasonably incidental to the investigation and proposal of the Claims Process;

(d) in paragraphs 3(d), (e) and (f), delete "upon the conclusion of the Claims Process and";

(e) in paragraph 19, delete "without prejudice to the rights of the parties to continue the Ongoing Litigation in the event the stay is lifted".

[140] Based on the foregoing, the Clawback Actions are stayed pending the investigation and proposal of a detailed Claims Process addressing the matters raised above. Whether or how the Clawback Actions or a Claims Process will proceed, is yet to be determined.

IV. Conclusion

[141] I grant the proposed order with the changes noted above.

[142] Given my knowledge of this matter, the Foreign Representative has permission to and should attempt to schedule a future application to address a proposed Claims Process before me

on the Commercial List. However, in the event my availability on the Commercial List does not align with reasonable timing, I do not consider myself seized with the matter. That is, I will not allow my schedule to cause unreasonable delay.

[143] The costs of the Application are deferred to be determined once a Claims Process is investigated and it, or some other process or path forward, is approved.

Heard on the 31st day of March, 2026.
Dated at the City of Calgary, Alberta, this 15th day of April, 2026.

M.A. Marion
J.C.K.B.A.

Appearances:

Karen Fellowes K.C., Eric Blay and Isis Tse
for the Applicant, Chavonnes Badenhorst St Clair Cooper, as Foreign Representative

Michael Custer and Steven Climenhaga
for the Respondent, Martin Manseau

Christian Saive and Jeff Sermet
for the Respondents, Jean Rivest and Jean-Charles Moyen

Brad Findlater
for the Respondent, Alan Cunningham

Russell Patterson
for the Respondent, Sergio Pablos Velez