

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No. : 500-11-036133-094

SUPERIOR COURT

Commercial Division  
(Sitting as a court designated pursuant  
to the  
*Companies' Creditors Arrangement Act*,  
R.S.C., c. C-36, as amended)

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IN THE MATTER OF THE PLAN OF  
COMPROMISE OR ARRANGEMENT  
OF:

ABITIBIBOWATER INC.,

And

ABITIBI-CONSOLIDATED INC.,

And

BOWATER CANADIAN HOLDINGS  
INC.,

And

the other Petitioners listed herein

Petitioners

And

ERNST & YOUNG INC.,

Monitor

MOTION TO CONTEST THE MOTION FOR ACCESS TO THE  
ELECTRONIC DATA ROOM CREATED BY THE PETITIONERS

TO THE HONOURABLE CLÉMENT GASCON J.S.C. OR ONE OF THE  
HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN  
COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF  
MONTRÉAL, THE ABITIBI PETITIONERS RESPECTFULLY SUBMIT THE  
FOLLOWING:

## I. PREAMBLE

1. On April 17, 2009, this Honourable Court issued an order (as subsequently amended and restated, the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of (i) Abitibi-Consolidated Inc. ("**ACT**") and subsidiaries thereof (collectively, the "**Abitibi Petitioners**"),<sup>1</sup> (ii) Bowater Canadian Holdings Inc. and subsidiaries thereof (collectively, the "**Bowater Petitioners**")<sup>2</sup> and (iii) certain partnerships.<sup>3</sup> Any undefined capitalized expressions used herein shall have the meaning set forth in the Initial Order.
2. Pursuant to the terms of the Initial Order, Ernst & Young Inc. (the "**Monitor**") was named monitor of the Petitioners.
3. On April 16, 2009, AbitibiBowater Inc. ("**ABH**"), Bowater Inc. and certain of their U.S. and Canadian subsidiaries filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware and on April 17, 2009, ABH and certain Petitioners (collectively with ABH, the "**18.6 Petitioners**")<sup>4</sup> obtained orders

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<sup>1</sup> The Abitibi Petitioners are Abitibi-Consolidated Inc., Abitibi-Consolidated Company of Canada, 3224112 Nova Scotia Limited, Marketing Donohue Inc., Abitibi-Consolidated Canadian Office Products Holdings Inc., 3834328 Canada Inc., 6169678 Canada Incorporated., 4042140 Canada Inc., Donohue Recycling Inc., 1508756 Ontario Inc., 3217925 Nova Scotia Company, La Tuque Forest Products Inc., Abitibi-Consolidated Nova Scotia Incorporated, Saguenay Forest Products Inc., Terra Nova Explorations Ltd., The Jonquière Pulp Company, The International Bridge and Terminal Company, Scramble Mining Ltd. and 9150-3383 Québec Inc.

<sup>2</sup> The Bowater Petitioners are Bowater Canadian Holdings Incorporated., Bowater Canada Finance Corporation, Bowater Canadian Limited, 3231378 Nova Scotia Company, AbitibiBowater Canada Inc., Bowater Canada Treasury Corporation, Bowater Canadian Forest Products Inc., Bowater Shelburne Corporation, Bowater LaHave Corporation, St. Maurice River Drive Company Limited, Bowater Treated Wood Inc., Canexel Hardboard Inc., 9068-9050 Québec Inc., Alliance Forest Products (2001) Inc., Bowater Belledune Sawmill Inc., Bowater Maritimes Inc., Bowater Mitis Inc., Bowater Guérette Inc. and Bowater Couturier Inc.

<sup>3</sup> The partnerships are Bowater Canada Finance Limited Partnership, Bowater Pulp and Paper Canada Holdings Limited Partnership and Abitibi-Consolidated Finance LP.

<sup>4</sup> The 18.6 Petitioners are AbitibiBowater Inc., AbitibiBowater US Holding 1 Corp., Bowater Ventures Inc., Bowater Incorporated, Bowater Nuway Inc., Bowater Nuway Mid-States Inc., Catawba Property Holdings LLC, Bowater Finance Company Inc., Bowater South American Holdings Incorporated, Bowater America Inc., Lake Superior Forest Products Inc., Bowater Newsprint South LLC, Bowater Newsprint South Operations LLC, Bowater Finance II, LLC, Bowater Alabama LLC and Coosa Pines Golf Club Holdings LLC.

under s. 18.6 of the CCAA in respect of the Chapter 11 Proceedings (the 18.6 Petitioners, the Abitibi Petitioners and the Bowater Petitioners being collectively referred to as the "**Petitioners**").

## II. ISSUE

4. On October 16, 2009, the Moving Party the Queen in Right of the Province of Newfoundland and Labrador (the "**Province**") filed a *Motion for a Declaration that the Petitioner is Entitled to Access the Electronic Data Rooms Created by the Debtors* (the "**Access Motion**") seeking access to the electronic data room of the Petitioners, which has so far been denied to the Province.
5. The Petitioners contest the Access Motion for the following:
  - (a) The Province does not come to the Court with clean hands;
  - (b) The Province is not a Creditor of the Petitioners;
  - (c) The Province owes the Petitioners in excess of \$300 million for wrongful appropriation of property for which ABH has provided notice of its intention to seek redress pursuant to proceedings under chapter 11 of the North American Free Trade Agreement ("**NAFTA**"); and
  - (d) The Province brings the Access Motion for collateral purposes to further interests unrelated to the restructuring of the Petitioners.

## III. BACKGROUND

6. On December 4, 2008, following a three-month period of unsuccessful negotiations with the Communications, Energy and Paperworkers Union ("**CEP**") to secure a cost savings agreement, the Petitioners announced the closure of the Grand Falls mill in the Province of Newfoundland and Labrador would take place in the first quarter of 2009. At the same time, certain subsidiaries of ABH also announced the closure of a mill in Covington, Tennessee and the idling of two machines in Calhoun, Tennessee.
7. Members of the CEP had voted on two occasions (September and November, 2008) to reject offers made by the Petitioners designed to secure a viable cost environment to permit the continued operation of the Grand Falls mill in the difficult market conditions then and now prevailing.
8. Immediately following the announcement by the Petitioners on December 4, 2009, the president of the CEP local union was quoted in the press as saying that "if they want to leave this province, they should leave with nothing". A copy of the press article dated December 4, 2008, which calls for action by the Province and is entitled "Abitibi Pulls Plug on Newfoundland Newsprint Mill", is communicated herewith as **Exhibit 1**.

9. In the days following the announcement of the closure of the Grand Falls mill, the Petitioners attempted in vain to negotiate with the Province concerning an orderly winding-down of their operations in the Province.
10. On December 16, 2008, without notice and within a single day, the Province introduced and passed into law the *Abitibi-Consolidated Rights and Assets Act* S.N.L. 2008, c. A-1.01 (the "**Abitibi-Consolidated Act**") a copy of which is communicated herewith as **Exhibit 2**.
11. Pursuant to the Abitibi-Consolidated Act, the Province purported:
  - (a) to seize with immediate effect substantially all of the assets, property and undertakings of the Petitioners in Newfoundland and Labrador;
  - (b) to cancel substantially all outstanding water and hydroelectric contracts and agreements between the Petitioners and the Province;
  - (c) to cancel a pending legal proceeding against the Province seeking the return of several hundreds of thousands of dollars in unlawfully assessed payments in respect of water rights already owned by the Petitioners;
  - (d) to deny the Petitioners any compensation for the seized assets; and
  - (e) to deny the Petitioners access to the Province's courts to seek redress.
12. The seized property and rights had a value in excess of \$300 million. These assets were acquired as a result of investments, acquisitions from third parties and leases granted by predecessors of the Province over a period of more than 100 years. Indeed, the Petitioners had invested almost \$300 million in the seized assets in the past decade alone including in the development and improvement of the hydroelectric facilities seized. The Exploits River hydro-electric assets upgrade had only been completed in 2003 at a cost of approximately \$74 million and was supplying electricity to the Province's electrical grid.
13. The Petitioners take the position that the Abitibi-Consolidated Act:
  - (a) is *ultra vires* the Province as being an unconstitutional infringement of interprovincial trade and commerce and a violation of existing rights in respect of lands, mines, minerals and resources contrary to s. 37 of the Newfoundland Act 12 & 13 Geo. VI, c. 22 (U.K.) by which Newfoundland and Labrador became part of Canada in 1949;

- (b) contrary to the constitutional principles of the Canadian Charter of Rights and Freedoms and to the Canadian Bill of Rights; and
  - (c) a bad faith enactment of the Government of Newfoundland and Labrador and a punitive and confiscatory statute repugnant to public policy and entitled to no deference by this or any other Court outside of the Province.
14. On April 23, 2009, ABH filed a *Notice of Intent to Submit a Claim to Arbitration* under Chapter 11 of NAFTA with the Attorney General for Canada as the Party responsible for compliance with NAFTA by the Province. ABH remains in negotiations with the Government of Canada with a view to resolving the claim which is for compensation in excess of \$300 million. A copy of the Notice of Intent is communicated herewith as **Exhibit 3**.
15. The Access Motion filed several press articles in support of an alleged claim that the Petitioners are responsible for alleged contamination from the former Asarco mine at the town of Buchans, Newfoundland and Labrador.
16. In fact, as is well known to the Province:
- (a) the Province is the owner of the lands and mining rights on which the subject mine site is situated;
  - (b) the Petitioners' residual interest as mining rights interest-holder in the property was fully surrendered to the Province in 1994, with the result that the Province has owned and managed all mining and mineral rights in the subject lands including the metals contained in the tailings spill area alleged to be the source of the contamination for over 15 years;
  - (c) the mine in question was actually operated by Asarco Incorporated, a corporation unrelated to the Petitioners, prior to its closure in 1984 under a co-tenancy agreement known to the Province; and
  - (d) the Petitioners had commissioned and provided the Province with a copy of the "Former Asarco Mine Site Phase I Environmental Site Assessment" report (delivered March 17, 2009) which indicated a number of other possible causes of the contamination being studied including discharges by the Town of Buchans itself plus discharges by the operations of another company unrelated to the Petitioners.

#### IV. GROUNDS FOR THIS MOTION

17. As a result of the punitive and unlawful actions taken by the Province, the Petitioners are of the view that the Province cannot seek discretionary

remedy from this Court while it denies the Petitioners access to fundamental justice in its own jurisdiction.

18. Unless and until the Province comes to the courts of other jurisdictions with clean hands and conforms its actions to Canada's international obligations including under NAFTA, it should be entitled to no equitable or discretionary relief from this Court .
19. The Province has adduced no credible or admissible evidence to establish that it is actually a creditor of the Petitioners which is specifically denied.
20. The material filed by the Province in support of the Access Motion contains few particulars of what claims the Province alleges to possess. It is alleged without supporting evidence that the Province has made payments to certain former employees of the Petitioners but no basis to establish the nature of the payments made or any lawful assignment of claims has been adduced.
21. Far from the Province being a creditor of the Petitioners, the Petitioners are significant creditors of the Province until full and fair compensation for the unlawful and arbitrary seizures of property made by the Province is made and the Province should either be enjoined from pursuing other claims until it has made full restitution or be required to admit full rights of set-off to the Petitioners.
22. The Province has no genuine interest in the restructuring of the Petitioners, having directed their energies at inflicting punishment and economic harm upon the Petitioners since the announcement of the closure of the Grand Falls mill in December, 2008.
23. The Data Rooms contain information concerning the economic claims the Petitioners have against the Province and there would accordingly be prejudice in allowing a party adverse in interest both to the restructuring of the Petitioners and the interests of all other stakeholders access to the Data Rooms.

**WHEREFORE, MAY THIS COURT:**

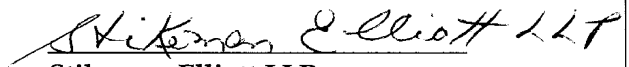
24. **DISMISS** the *Motion for a Declaration that the Petitioner is Entitled to Access the Electronic Data Rooms Created by the Debtors of the Province of Newfoundland and Labrador (the "Province")*;
25. **DECLARE** that the Province is entitled to no equitable or other relief from this Court whatsoever in respect of the Petitioners until such time as it has recognized the property rights unlawfully seized pursuant to the *Abitibi-Consolidated Rights and Assets Act* S.N.L. 2008, c. A-1.01 (the "**Abitibi-Consolidated Act**")

26. **AUTHORIZE** the Monitor to designate a former judge of a Superior Court of a Canadian Province as Claims Officer to hear and determine all alleged Claims filed by the Province and any future claims, as well as any and all counterclaims and cross-claims which the Petitioners may assert by way of full or partial set-off of such claims against the Province arising from the seizures purported to be effected pursuant to the Abitibi-Consolidated Act, the whole, in due course and pursuant to the Order of this Court dated August 29, 2009 as well as any subsequent order issued by this Court in respect of the Claims Process;

27. **GRANT** such further order as this Court thinks appropriate.

**THE WHOLE WITH COSTS.**

Montréal, October 26, 2009

  
**Stikeman Elliott LLP**  
**Attorneys for the Petitioners**

# AFFIDAVIT

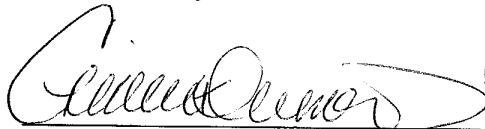
I, the undersigned, Alice Minville, having my principal place of business at Suite 800, 1155 Metcalfe Street, Montréal, Quebec, H3B 5H2 solemnly declare the following:

1. I am in-house Legal Counsel for AbitibiBowater Inc.;
2. All the facts alleged in the *Motion to Contest the Motion for Access to the Electronic Data Room Created by the Petitioners* are true.

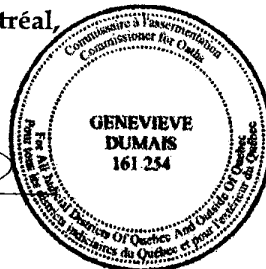
AND I HAVE SIGNED

  
ALICE MINVILLE

Solemnly declared before me at Montréal,  
on the 26th day of October, 2009



Commissioner for oaths



## NOTICE OF PRESENTATION

TO: SERVICE LIST

**TAKE NOTICE** that the Province of Newfoundland and Labrador's *Motion for a Declaration that the Petitioner is Entitled to Access the Electronic Data Rooms Created by the Debtors* and the Petitioners' *Motion to Contest the Motion for Access to the Electronic Data Room Created by the Petitioners* will be presented for adjudication before one of the Honourable Judges of the Superior Court, sitting in practice in and for the District of Montreal, in the **Montreal Court House, 1 Notre-Dame St. East**, on **November 2, 2009** at **9:30 am** in a Room to be announced to the Service List.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montreal, October 26, 2009

  
**STIKEMAN ELLIOTT LLP**  
Attorneys for Petitioners

**Nº. 500-11-036133-094**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

**In the matter of Plan of Compromise or Arrangement of:**

ABTIBIBOWATER INC. *et al*

## Petitioners

- and -

ERNST & YOUNG INC.

## Monitor

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|--------|---------------------|
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**MOTION TO CONTEST THE MOTION FOR  
ACCESS TO THE ELECTRONIC DATA ROOM  
CREATED BY THE PETITIONERS**

ORIGINAL

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STIKEMAN ELLIOTT

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