

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No. : 500-11-036133-096

SUPERIOR COURT

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

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

ABITIBI BOWATER INC.

and

ABITIBI-CONSOLIDATED INC.

and

BOWATER CANADIAN HOLDINGS INC.  
and the other Petitioners listed on  
Schedules A, B and C

Debtors

and

ERNST & YOUNG INC.

Monitor

and

HER MAJESTY THE QUEEN IN RIGHT OF  
THE PROVINCE OF NEWFOUNDLAND AND  
LABRADOR

Petitioner

**MOTION FOR A DECLARATION THAT THE PETITIONER IS ENTITLED TO ACCESS  
THE ELECTRONIC DATA ROOMS CREATED BY THE DEBTORS**

TO JUSTICE GASCON OR ONE OF THE HONOURABLE JUDGES OF THE  
SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE

JUDICIAL DISTRICT OF MONTRÉAL, THE PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:

**A. Background**

1. On 17 April 2009 this Honourable Court issued an order granting the protection of the *Companies' Creditors Arrangement Act* to the Debtors (hereinafter referred to as "**Abitibi**").
2. On 2 September 2009 the Monitor issued its Fifteenth Report (the "**Report**"). In that Report, the Monitor provided a summary of Abitibi's restructuring activities as at that date. These activities included the creation of electronic data rooms containing information to allow stakeholder advisors to assess the ongoing condition of Abitibi's business.
3. In order to have access to the electronic data rooms, stakeholders must obtain permission from Abitibi. Numerous stakeholders and their advisors have been granted access to the electronic data rooms to date.
4. Her Majesty the Queen in Right of the Province of Newfoundland and Labrador (the "**Province**") is a stakeholder in these proceedings. It has requested access to the electronic data rooms for the purpose of assessing the ongoing condition of Abitibi's business.
5. Abitibi has denied the Province access to the electronic data rooms.

**B. The Province is a stakeholder with legitimate interests in the ongoing condition of Abitibi's business**

- (i) ***The Province is a stakeholder insofar as it has incurred significant expenses to fulfil Abitibi's obligations to its former employees in the Province***
6. In or about May 2009, the Province made a commitment to make whole Abitibi's former employees in the Province (the "**former employees**"), who saw their entitlement to severance and termination pay stayed as a result of the initial order issued in these proceedings.
7. In or about June 2009, the Province began implementing a plan whereby Abitibi's former employees received their entitlement to severance and termination pay in exchange for an assignment of their rights to make a claim in these proceedings to an organisation created by the various unions involved and funded by the Province for that purpose (the "**Assignee**").

8. The Province has taken on an active role to ensure: that the former employees receive their severance and termination pay entitlements; that the former employees enter into the requisite assignment agreements; and that the claims procedure approved in these proceedings is followed. The Province has been communicating with the Monitor to address some of the issues arising from the assignment agreements and the claims procedure.
9. The Province has expended in excess of \$24 million from the public purse to fulfil obligations that belong to Abitibi. The Province will be repaid for these severance and termination expenses from the claims made by the Assignee in these proceedings.

**(ii) *The Province is also a creditor of Abitibi***

10. Abitibi carried on economic activities in the Province for several decades. As a result of these economic activities, Abitibi has incurred obligations to the Province, including environmental obligations.
11. Some of the environmental problems resulting from Abitibi's economic activities have recently led to controversy and nation-wide publicity, the whole as appears from the media reports communicated herewith *en liasse* as **Exhibit NL-1**.
12. Abitibi continues to have outstanding obligations to the Province. The Province has incurred costs and liabilities as a result of Abitibi's failure to meet its obligations and is therefore a creditor of Abitibi.
13. The Province and Abitibi have entered into an agreement whereby the Province's environmental consultants have access to the sites where Abitibi carried on its economic activities for the purpose of determining the full nature and extent of Abitibi's residual environmental obligations to the Province. The Province has already incurred significant costs in that regard.

**C. Grounds for this Motion**

14. The Province has a public duty to inform itself about Abitibi's present and future potential ability to compensate the public of Newfoundland and Labrador for costs and liabilities the Province has incurred arising out of Abitibi's economic activities in the Province, and to determine whether the Province's interests can be addressed through these proceedings.
15. This duty can only be fulfilled if the Province can make its own assessment with respect to Abitibi's financial status in the same manner as Abitibi's other creditors and stakeholders. This, in turn, can only be

done if the Province has access to the electronic data rooms on the same basis as Abitibi's other stakeholders and creditors do.

16. In order to ensure the fairness of the restructuring process, stakeholders must have access to information that enables them to decide what course of action to pursue in the proceedings, if any.
17. Abitibi itself, through its Chief Restructuring Officer, has acknowledged the importance of transparency and openness in restructuring proceedings. Indeed, it appears that Abitibi has done everything it could to ensure that stakeholders other than the Province have access to Abitibi's management team, information and information analysis, the whole as appears from the evidence given by Bruce Robertson on 25 September 2009, which is excerpted as **Exhibit NL-2**.
18. Abitibi has even hosted comprehensive information and due diligence sessions, meetings and conference calls to ensure that its stakeholders other than the Province are in a position to assess the affairs and direction of Abitibi.
19. Numerous stakeholders other than the Province have had and continue to appear to enjoy access to the electronic data rooms and have been given the opportunity to participate in the information sessions, meetings and conference calls detailed above.
20. In denying the Province's access to the electronic data rooms and, by extension, these information sessions and meetings, Abitibi has unfairly discriminated against the Province.
21. It is a fundamental tenet of insolvency law that all similarly situated stakeholders must receive equal treatment.
22. Insofar as it is a stakeholder and a creditor of Abitibi, the Province must be treated in the same manner as Abitibi's other stakeholders and creditors. This includes being given access to the electronic data rooms, on the same terms as Abitibi's other stakeholders and creditors.
23. No prejudice can accrue to Abitibi by virtue of the Province's having access to the same information to which Abitibi's stakeholders are privy, on the same terms.
24. Significant prejudice will accrue to the Province if it is not allowed to access information that is crucial in allowing it to weigh its options in these proceedings.
25. It is respectfully submitted that this motion should be granted in accordance with its conclusions.

26. The present motion is well founded in fact and in law.

**WHEREFORE MAY THIS COURT:**

- [1] **GRANT** this motion for declaratory relief.
- [2] **DECLARE** that the Debtors must provide the Petitioner and its advisors access to the electronic data rooms described in the Fifteenth Report of the Monitor, on the same terms as the Debtors' other stakeholders.
- [3] **EXEMPT**, if applicable, the Petitioner from having to serve this motion and from any notice or delay of presentation.
- [4] **GRANT** such further and other relief as this Court deems just and proper.
- [5] **GRANT** the provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security.

**THE WHOLE WITHOUT COSTS**, save and except in case of contestation.

Toronto, 16 October 2009



**WEIRFOULDS LLP**  
Attorneys for Her Majesty the  
Queen in Right of the Province of  
Newfoundland and Labrador

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

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Petitioner

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ATTESTATION OF AUTHENTICITY

I, Catherine Powell, a lawyer practicing at 130 King Street West, Suite 1600, Toronto, Ontario, M5X 1J5, attest as follows:

1. On 16 October 2009, at 3:24 p.m., I received via facsimile from Ms. Donna M. Ballard an affidavit in court file no. 500-11-036133-094, Superior Court, Commercial Division, District of Montréal;
2. Ms. Ballard sent the affidavit in question from St. John's, Newfoundland. Ms. Ballard's facsimile number is (709) 729-2129;
3. The copy of the affidavit attached to this Attestation corresponds to the facsimile I received from Ms. Ballard, Director, Civil Division, Department of Justice.

16 October 2009

A handwritten signature in cursive script, appearing to read 'CP', is written over a horizontal line.

Catherine Powell

**WEIRFOULDS LLP**

**AFFIDAVIT**

I, the undersigned, Donna Ballard, having my principal place of business at 4<sup>th</sup> Floor, East Block, Confederation Building, P.O. Box 8700, St. John's, NL, A1B 4J6, solemnly declare the following:

1. I am the Director, Civil Division, Department of Justice for the Government of Newfoundland and Labrador.
2. All the facts alleged in the *Motion for a Declaration that the Petitioner is Entitled to Access the Electronic Data Room Created by the Debtors* are true.

**AND I HAVE SIGNED**

  
\_\_\_\_\_  
Donna Ballard

Solemnly declared before me at  
St. John's, in the Province of  
Newfoundland and Labrador,  
on the 16<sup>th</sup> day of October, 2009:

  
\_\_\_\_\_  
Notary Public, NL  
*Barrister, Solicitor,  
Notary (DNL)*



Government of Newfoundland and Labrador  
Department of Justice

*Civil Division*

Date: 16 October 2009  
To: WeirFoulds LLP  
Attention: Catherine Powell  
Fax No. 416-365-1876  
From: Donna Ballard  
Tel No.: 729-0543  
Number of pages: 2 (including this cover sheet)  
Original: To follow by: Held on File: X

Message:

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## **NOTICE OF PRESENTATION**

**TAKE NOTICE** that the foregoing Motion shall be presented for adjudication before this Honourable Court at the court house in Montreal, 1 Notre-Dame Street East, at a such date and time as may be fixed by this Honourable Court.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Toronto, 16 October 2009

  
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**WEIRFOULDS LLP**  
Attorneys for Her Majesty  
the Queen in Right of the  
Province of Newfoundland  
& Labrador

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| <p style="text-align: center;">SUPERIOR COURT<br/>(Commercial Division)<br/>DISTRICT OF MONTREAL<br/>No.: 500-11-036133-094</p>                                       | <p><b>IN THE MATTER OF THE PLAN OF COMPROMISE OR<br/>ARRANGEMENT OF:</b><br/> <b>ABITIBOWATER INC.</b><br/> and<br/> <b>ABITIBI-CONSOLIDATED INC.</b><br/> and<br/> <b>BOWATER CANADIAN HOLDINGS INC.</b><br/> and<br/> The other Petitioners listed on Schedules "A", "B" and "C"</p> <p style="text-align: right;">Debtors</p> <p><b>AND</b><br/> <b>ERNST &amp; YOUNG INC.</b></p> <p style="text-align: right;">Monitor</p> <p><b>AND</b><br/> Her Majesty the Queen in Right of the Province of<br/> Newfoundland and Labrador</p> <p style="text-align: right;">Petitioner</p> |
| <p style="text-align: center;"><b>MOTION FOR A DECLARATION THAT THE PETITIONER IS<br/>ENTITLED TO ACCESS THE ELECTRONIC DATA ROOMS<br/>CREATED BY THE DEBTORS</b></p> | <p style="text-align: center;"><b>WEIRFOULDS LLP</b><br/> Barristers &amp; Solicitors<br/> P.O. Box 480, Suite 1600, The Exchange Tower<br/> 130 King Street West, Toronto, ON M5X 1J5<br/> Tel: 416-365-1110 Fax: 416-365-1876</p> <p style="text-align: center;"><i>Attorneys for Her Majesty the Queen in Right of the Province of<br/>Newfoundland and Labrador</i></p>                                                                                                                                                                                                          |