

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

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)

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

**AMENDED MOTION FOR A DECLARATION REGARDING ORDERS
ISSUED PURSUANT TO THE *ENVIRONMENTAL PROTECTION ACT*,
S.N.L. 2002, CHAP. E-14.02**

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. Overview

1. The Debtors and their predecessors (hereinafter referred to as "**Abitibi**") carried on industrial activity in the Province of Newfoundland and Labrador (the "**Province**"), the Petitioner herein, since at least 1905.
2. As a result of this industrial activity, Abitibi has incurred statutory obligations to the Province for environmental remediation. These statutory obligations are captured by orders issued by the Minister of Environment and Conservation in the Province (the "**Minister**") on 12 November 2009 pursuant to s. 99 of the *Environmental Protection Act*, S.N.L. 2002, chap. E-14.02 ("**EPA**").
3. On 17 April 2009, this Honourable Court issued an initial order pursuant to the *Companies' Creditors Arrangement Act* ("**CCAA**") with respect to Abitibi (the "**Initial Order**"). Since then, this Court has issued a number of orders in these proceedings, including the First Stay Extension Order dated 14 May 2009 and the Claims Procedure Order dated 26 August 2009.
4. The First Stay Extension Order amended the Initial Order to ensure that the stay of proceedings imposed in the Initial Order could not be interpreted to prevent the federal or provincial governments from exercising their powers, rights or duties in relation to public health, safety, security, public order or the environment, except that financial or monetary fines or orders issued by these governments remained stayed.
5. It is possible to interpret the Claims Procedure Order in such a manner that renders it inconsistent with this amendment to the Initial Order: whereas the amendment to the Initial Order permits the Province, *inter alia*, to issue non-monetary orders requiring Abitibi to comply with statutory environmental obligations, the Claims Procedure Order might bar, extinguish or otherwise affect the enforceability of such orders.
6. To avoid this result, the Province, by the within motion, seeks a declaration that:
 - (a) the Claims Procedure Order shall not bar, extinguish or otherwise affect the enforceability of orders made against the Debtors, the Property or the Directors (all as defined in the Initial Order) or others, by Her Majesty the Queen in Right of the Federal or a provincial government, or her agents, pursuant to her exercise of powers, rights or duties in relation to matters involving public

health, safety, security, public order or the environment, provided that any financial or monetary fines or orders may be affected by the Claims Procedure Order; and

- (b) for greater certainty, that the orders issued by the Minister against Abitibi on 12 November 2009 pursuant to s. 99 of the EPA are not barred or extinguished and their enforceability is not otherwise affected by the Claims Procedure Order and, in particular, but without limiting the generality of the foregoing, by paragraphs 3(t) and 15 of that order.

B. Factual Background

7. Since at least 1905, Abitibi carried on extensive industrial activities in the Province. These activities extended from mining and processing minerals, to cutting and milling timber, to making wood pulp and paper products, to shipping and storing materials, and to related activities. These activities were carried on at several locations in the Province (in plural "**Abitibi Sites**" and in singular "**Abitibi Site**"), as follows:
 - (i) Mining and processing of minerals: Buchans;
 - (ii) Pulp and paper operations: Grand Falls-Windsor and Stephenville;
 - (iii) Shipping and storing: Botwood; and
 - (iv) Logging: approximately 50 different locations across the Province.
8. Abitibi's industrial activities resulted in the release of substances into the environment in amounts, concentrations, and at rates which have caused and will in the future continue to cause an adverse effect both on and adjacent to the Abitibi Sites.
9. Over the years, Abitibi performed some environmental site assessment work at some of the Abitibi Sites. It also completed some remediation work at some of the Abitibi Sites. However, by the spring of 2009, Abitibi had not, as far as the Province knew, fulfilled all of its obligations under the EPA with respect to the Abitibi Sites.
10. Therefore, on 12 June 2009, the Province wrote to Abitibi requesting that Abitibi provide certain reports, including environmental site assessment (in singular "**ESA**" and in plural "**ESAs**") reports, for the Abitibi Sites. A copy of this letter is communicated herewith as **Exhibit NL-1**.
11. On 18 June 2009, Abitibi's counsel indicated that the Province's request would remain under consideration in light of: (a) the *Abitibi-Consolidated Rights and Assets Act*, S.N.L. 2008, chap. A-1.01; (b) the Initial Order issued by this Court; and (c) the Ministerial Order pertaining to the Tailings

Spill Area at Buchans. A copy of the letter sent to the Province by Abitibi's counsel is communicated herewith as **Exhibit NL-2**.

12. In his letter dated 18 June 2009, counsel for Abitibi noted that efforts to comply with Abitibi's obligations under the EPA were ongoing. More recently, in a letter dated 14 August 2009, Abitibi once again acknowledged that it has ongoing environmental obligations pursuant to the EPA. A copy of the 14 August 2009 letter is communicated herewith as **Exhibit NL-3**.
13. Based on this response, the Province could not be certain when, if at all, Abitibi would fulfil its obligations to provide the assessment reports or whether Abitibi would fulfil its obligations to remediate the contamination identified in those reports. Accordingly, in order to ensure that it had complete and accurate information about the environmental condition of the Abitibi Sites, and, based on that information, to ensure that Abitibi's obligation to protect the environment could be fulfilled, the Province's solicitors, in July of 2009, retained the services of environmental consultants, Conestoga-Rovers & Associates ("**CRA**"), to undertake ESAs at the Abitibi Sites.
14. CRA was able to begin its assessment work at one of the Abitibi Sites, Buchans, in the latter part of July 2009. However, it needed to obtain access to the remaining Abitibi Sites in order to complete its work.
15. After extensive negotiations that lasted more than one month, on 3 September 2009, Abitibi and the Province entered into an agreement whereby Abitibi would provide access to CRA to the Abitibi Sites for the purpose of conducting the ESAs, subject to a number of conditions. A copy of the resulting Access Agreement is communicated herewith as **Exhibit NL-4**.
16. The Access Agreement contained two categories of conditions that caused delays in CRA obtaining access to the Abitibi Sites and beginning and, therefore, completing its work. One was the condition that Abitibi pre-approve the location of soil and groundwater testing sites due to safety considerations. On several occasions, Abitibi used the condition to delay CRA's access to the sites, and performance of the tests, for reasons unrelated to safety.
17. The second condition related to the supply of information by Abitibi with respect to environmental testing it had done at the Stephenville, Botwood, and Grand Falls-Windsor sites. If CRA were satisfied that the information so supplied was sufficient to allow it to prepare a report without intrusive testing, CRA would not need to do that testing. If, however, the information was not sufficient, CRA was to return it to Abitibi and then undertake its own testing.

18. Abitibi supplied some information, in or about the middle of September 2009, with respect to the Botwood and Stephenville sites. The information was, however, incomplete and Abitibi undertook to provide further information. Abitibi did not supply the final information until the first week of October 2009. As a result, CRA was not able to do the required testing for the ESA at the Stephenville and Botwood sites until the end of October 2009.
19. In November 2009, CRA issued reports setting out the results of its ESAs on each of the Abitibi Sites. Each report concludes that the particular Abitibi Site that was the subject of the assessment (and, in many instances, the property adjacent to the Abitibi Site) suffers from extensive contamination in excess of applicable standards. CRA's ESA reports are communicated herewith *en liasse* as **Exhibit NL-5**.
20. Accordingly, on 12 November 2009, the Province issued orders pursuant to s. 99 of the EPA against Abitibi requiring it to do the following (the "**EPA orders**"):
 - (i) submit to the Department of Environment and Conservation ("**ENVC**") for approval a detailed Remediation Action Plan by 15 January 2010 for all of the Abitibi Sites and the sites adjacent to the Abitibi Sites that have been identified in the ESA prepared by CRA as having exceedances greater than the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG;
 - (ii) complete the approved site remediation actions by 15 January 2011 or by another date as may be agreed upon with ENVC; and
 - (iii) once the Remediation Action Plan is approved by ENVC, file with ENVC, on a quarterly basis, progress reports outlining in detail the work completed on the Abitibi Sites and the sites adjacent to the Abitibi Sites.
21. Copies of the EPA orders are communicated herewith *en liasse* as **Exhibit NL-6**.
22. On 11 January 2010, Abitibi appealed the EPA Orders, to the Minister, pursuant to s. 107 of the EPA.
23. On 8 February 2010, the Minister dismissed the appeals of the EPA Orders. Copies of the Decisions on Appeal of the EPA Orders are communicated herewith *en liasse* as **Exhibit NL-14**.

C. Legal Framework

(i) The EPA

24. Section 7 of the EPA provides that a person shall not release or permit the release of a substance into the environment in an amount that may cause an adverse effect:

7. (1) A person shall not release or permit the release of a substance into the environment in an amount, concentration or level or at a rate of release that in the opinion of the minister causes or may cause an adverse effect, unless authorized under this Act or an approval issued under this Act.

(2) A person shall not release or permit the release of a substance into the environment in an amount, concentration or level or at a rate of release exceeding that expressly authorized under this Act or an approval issued under this Act.

25. Section 99 of the EPA allows the Minister to issue orders where the Minister believes on reasonable grounds that a person responsible has contravened or will contravene the EPA:

99. (1) Where the minister believes on reasonable grounds that a person responsible has contravened or will contravene this Act or the terms or conditions of an agreement, approval, amended or varied approval, licence or an undertaking exempted or released under this Act, the minister may, whether or not that person has been charged or convicted in respect of the contravention, issue an order, in writing, requiring a person at that person's own expense, to

(a) stop or shut down an activity or an undertaking immediately, permanently, or for a specified time, where, with respect to that activity or undertaking, there has been a contravention of this Act, the regulations or a term or condition applicable to that activity or undertaking;

(b) do all things and take all steps that are necessary to control, manage, eliminate, remedy or prevent an adverse effect or an environmental effect and to comply with this Act, the regulations or terms or conditions applicable to an approval, activity or undertaking in accordance with directions set out in the order;

...

and there shall be served on the person responsible a copy of the order and a statement showing the reasons for the making of the order and upon receipt of the copy and statement, that person shall comply with the order.

(2) In environmentally sensitive areas, an order under subsection (1) may impose terms and conditions in excess of requirements provided under this Act and policies, guidelines, approval or standards prescribed or adopted by the department.

(3) In addition to other requirements that may be included in an order issued under this Part, an order may contain provisions

(a) requiring a person, at that person's own expense, to

(i) maintain records on a relevant matter and report periodically to the minister or a person appointed by the minister,

(ii) hire an expert to prepare a report for submission to the minister or a person appointed by the minister,

(iii) submit to the minister or a person appointed by the minister, a proposal, plan or information specified by the minister setting out an action to be taken by the person,

(iv) prepare and submit a contingency plan,

(v) undertake tests, investigations, surveys and other action and report results of these to the minister, and

(vi) take another measure that the minister considers necessary to facilitate compliance with the order or to protect or restore the environment;

(b) establishing the manner, method, or procedures to be used in carrying out the measures required by the order; and

(c) establishing a time within which a measure required by the order is to be commenced and the time

within which the measure, order or a portion of the measure or order must occur.

...

26. "Person responsible" is defined as follows in the EPA:

2. (x) "person responsible" means

- (i) the owner of a substance or thing,
- (ii) the owner or occupier of land on which an adverse effect has occurred or may occur,
- (iii) the owner or operator of an undertaking,
- (iv) a previous owner of a substance or thing,
- (v) a person who handles or has or has had care, management or control, including care, management or control during the generation, manufacture, treatment, sale, handling, distribution, use, storage, disposal, transportation, display or method of application of a substance or thing,
- (vi) a successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in subparagraphs (i) to (v), or
- (vii) a person who acts as the principal or agent of a person referred to in subparagraphs (i) to (vi).

(ii) **The CCAA**

27. The terms "secured creditor", "unsecured creditor", and "claim" are defined as follows by the CCAA:

"Secured creditor": a holder of a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, all or any property of a debtor company as security for indebtedness of the debtor company, or holder of any bond of a debtor company secured by a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, or a trust in respect of, all or any property of the debtor company, whether the holder or beneficiary is resident or domiciled within or outside Canada, and a trustee under any trust deed or other instrument securing any of those bonds shall be deemed to be a secured creditor for all

purposes of this Act except for the purposes of voting at a creditors' meeting in respect of any of those bonds.

"Unsecured creditor": any creditor of a company who is not a secured creditor, whether resident or domiciled within or outside Canada, and a trustee for the holders of any unsecured bonds issued under a trust deed or other instrument running in favour of the trustee shall be deemed to be an unsecured creditor for all purposes of this Act except for the purpose of voting at a creditors' meeting in respect of any of those bonds.

"Claim": any indebtedness, liability or obligation of any kind that would be a debt provable within the meaning of section 2 of the *Bankruptcy and Insolvency Act*.

28. Under s. 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("**BIA**"), "claim provable in bankruptcy", "provable claim" or "claim provable" includes any claim or liability provable in proceedings under the BIA by a creditor.

29. Pursuant to s. 121(1) of the BIA, "claims provable" consist of:

[a]ll debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under the Act.

(iii) Orders issued in these proceedings

30. The Initial Order issued by this Court on 17 April 2009 contains the following paragraph:

10. ORDERS that, until and including May 14, 2009, or such later date as the Court may order (the "Stay Termination Date", the period from the date of this Order to the Stay Termination Date being referred to as the "Stay Period"), no right, legal or conventional, may be exercised and no proceeding, at law or under a contract, by reason of this Order or otherwise, however and wherever taken (collectively the "Proceedings") may be commenced or proceeded with by anyone, whether a person, firm, partnership, corporation, stock exchange, government, administration or entity exercising executive, legislative, judicial, regulatory or administrative functions (collectively,

"Persons" and, individually, a "Person") against or in respect of the Petitioners, the 18.6 Petitioners and the entities listed on Schedule "D" hereto (the "Partnerships"), or any of the present or future property, assets, rights and undertakings of the Petitioners, the 18.6 Petitioners or the Partnerships, of any nature and in any location, whether held directly or indirectly by the Petitioners, the 18.6 Petitioners or the Partnerships, in any capacity whatsoever, or held by others for the Petitioners, the 18.6 Petitioners or the Partnerships (collectively, the "Property"), and all Proceedings already commenced against the Petitioners, the 18.6 Petitioners, the Partnerships or any of the Property, are stayed and suspended until the Court authorizes the continuation thereof, the whole subject to the provisions of the CCAA.

31. The Initial Order was subsequently amended on several occasions. However, paragraph 10 of the Initial Order has remained unchanged and as set out above.

32. On 14 May 2009, this Court granted the First Stay Extension Order, thereby extending the stay of proceedings to 4 September 2009. The stay of proceedings has since been extended to 15 December 2009. At the request of the Attorney General of Canada, the following amendment to the Initial Order was included as part of the First Stay Extension Order:

10.1. ORDERS that the aforementioned stay cannot be interpreted as to restrict or prevent Her Majesty the Queen, or her agents, from exercising powers, rights or duties in relation to matters involving public health, safety, security, public order or the environment against the Petitioners, the Partnerships, the Property, the Directors or others, providing that any financial or monetary fines or orders shall be stayed.

33. On 26 August 2009, this Court issued an order setting out a claims procedure for Abitibi's creditors (the "**Claims Procedure Order**").

34. Paragraph 3(t) of the Claims Procedure Order defines "claim" as follows:

"Claim" means any right or claim of any Person against one or more of the Canadian Petitioners or Partnerships in connection with any indebtedness, liability or obligation of any kind whatsoever of one or more of the Canadian Petitioners or Partnerships, whether reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by

guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including without limitation any claim arising from or caused by the repudiation by a Canadian Petitioner or Partnership of any contract, lease or other agreement, whether written or oral. the commission of a tort (intentional or unintentional), any breach of duty (legal, statutory, equitable, fiduciary or otherwise), any right of ownership or title to property, employment, contract, a trust or deemed trust, howsoever created, any claim made or asserted against any one or more of the Canadian Petitioners or Partnerships through any affiliate, or any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any grievance, matter, action, cause or chose in action, whether existing at present or commenced in the future, based in whole or in part on facts which existed on the Canadian Filing Date, together with any other claims of any kind that, if unsecured, would constitute a debt provable in bankruptcy within the meaning of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3; provided that "Claim" shall not include any Excluded Claim.

35. Paragraph 15 of the Claims Procedure Order, in turn, is as follows:

ORDERS that, subject to paragraph 14 and unless otherwise ordered by this Court, any Creditor who does not deliver a Canadian Proof of Claim in respect of a Claim or Subsequent Claim in accordance with paragraphs 10, 12 and 13 shall be forever barred from asserting such Claim or Subsequent Claim against any of the Canadian Petitioners or Partnership and such Claim or Subsequent Claim shall be forever extinguished and any holder of such Claim or Subsequent Claim shall not be entitled to participate as a Creditor in these proceedings or receive any further notice in respect of these proceedings, the Canadian Claims Procedure or any Plan and shall not be entitled to vote on any Plan or receive any distribution from any Plan or otherwise from the Canadian Petitioners or Partnerships, or the Monitor on behalf of the Canadian Petitioners or Partnerships, in respect of such Claim or Subsequent Claim.

D. Grounds for this Motion

36. The EPA sets out Abitibi's obligations and the Province's powers and rights with respect to environmental protection and remediation. These obligations are part of the general law of the Province, to which Abitibi is subject.

37. In order to ensure compliance with these obligations, the EPA gives the Minister the power to issue orders.

38. The Minister has availed herself of these powers and has issued several orders pursuant to s. 99 of the EPA, as described above.

(i) The orders issued pursuant to the EPA fall within the ambit of paragraph 10.1 of the First Stay Extension Order and are not stayed by the within proceedings

39. Paragraph 10.1 of the First Stay Extension Order states that the stay of proceedings set out in the Initial Order does not restrict or prevent Her Majesty the Queen or her agents from exercising powers, rights or duties in relation to matters involving public health, safety, security, public order or the environment, provided that any financial or monetary fines or orders shall be stayed.

40. The orders issued by the Province against Abitibi pursuant to the EPA are in relation to the environment. They are not financial or monetary fines or orders. They simply require Abitibi to take certain steps in order to comply with its statutory obligations for the protection of the environment in the Province.

41. As such, they fall within the ambit of paragraph 10.1 of the First Stay Extension Order and are not stayed by the within proceedings.

(ii) It could have not been the intention of this Court to issue the Claims Procedure Order with terms that conflict with and undermine the First Stay Extension Order

42. Paragraphs 3(t) and 15 of the Claims Procedure Order, in combination, might be interpreted in a manner that renders this order inconsistent with paragraph 10.1 of the First Stay Extension Order. Given the definition of "Claim" contained in paragraph 3(t) of the Claims Procedure Order, it is possible to interpret paragraph 15 of that order as barring or extinguishing all liabilities and obligations arising out of any breach by Abitibi of a statutory duty. This would include, presumably, a breach of an order to perform certain actions issued by a government for the protection of the environment.

43. To interpret the Claims Procedure Order in that manner would render paragraph 10.1 of the First Stay Extension Order meaningless since there would be no point in confirming that a government may issue an order requesting Abitibi to perform certain actions if that order cannot subsequently be enforced according to its terms and the applicable legislation.

44. Furthermore, paragraph 10.1 of the First Stay Extension Order recognises and accepts that a government's exercise of powers, rights or duties in relation to matters involving public health, safety and the environment is different from debts and financial obligations owed by Abitibi to its creditors. To permit paragraph 15 of the Claims Procedure Order to bar, extinguish or otherwise affect the enforceability of orders falling within the ambit of paragraph 10.1 of the First Stay Extension Order abolishes this important distinction.

45. It could not have been the intention of this Court to issue a second order rendering the first one meaningless. Accordingly, clarification is required to confirm that the Claims Procedure Order does not bar, extinguish or otherwise affect the enforceability of the EPA orders that fall within the ambit of paragraph 10.1 of the First Stay Extension Order, including the EPA orders issued by the Province.

(iii) In the alternative, if this Court intended for the Claims Procedure Order to bar, extinguish or otherwise affect the enforceability of the EPA orders, it acted outside of its statutory jurisdiction

46. The CCAA, as a matter of statutory interpretation, can only extend to claims made by secured and unsecured creditors.

47. Non-financial or non-monetary orders issued by the Province in relation to matters involving the environment are not "claims" as that term is defined in the CCAA, and the issuance of these orders does not render the Province a "creditor", whether secured or unsecured, as that term is defined in the CCAA.

48. To the extent that paragraph 15 of the Claims Procedure Order may be interpreted as barring, extinguishing or otherwise affecting the enforceability of the EPA orders (which do not create debts owing to the Province), it is contrary to the CCAA and, in making the Claims Procedure Order, this Court exceeded its statutory jurisdiction. Accordingly, the Claims Procedure Order should be amended to ensure that it does not extend to the EPA orders.

(iv) In the further alternative, this Court does not have the constitutional competence to issue orders under the CCAA that bar, extinguish or otherwise affect the enforceability of the EPA orders

49. The EPA orders are within the constitutional competence of the Province. Conversely, the ability to bar or extinguish or otherwise affect the enforceability of such orders is not within the constitutional competence of Parliament. Accordingly, to the extent that paragraph 15 of the Claims

Procedure Order bars, extinguishes or otherwise affects the enforceability of the EPA orders, the Claims Procedure Order is constitutionally ineffective.

- 50. Therefore, the Claims Procedure Order should be amended to ensure that it does not extend to the EPA orders.
- 51. This amended motion is well founded in fact and in law.

WHEREFORE MAY THIS COURT:

- [1] **GRANT** this amended motion for a declaration regarding orders issued pursuant to the *Environmental Protection Act*, S.N.L. 2002, chap. E-14.02.
- [2] **DECLARE** that the Claims Procedure Order shall not bar, extinguish or otherwise affect the enforceability of orders made against the Debtors, the Property or the Directors (all as defined in the Initial Order) or others, by Her Majesty the Queen in Right of the Federal or a provincial government, or her agents, pursuant to her exercise of powers, rights or duties in relation to matters involving public health, safety, security, public order or the environment, provided that any financial or monetary fines or orders may be affected by the Claims Procedure Order.
- [3] **DECLARE** that, for greater certainty, that the orders issued by the Minister against Abitibi on 12 November 2009 pursuant to s. 99 of the EPA are not barred or extinguished and their enforceability is not otherwise affected by the Claims Procedure Order and, in particular, but without limiting the generality of the foregoing, by paragraphs 3(t) and 15 of that order.
- [4] **EXEMPT**, if applicable, the Petitioner from having to serve this motion and from any notice or delay of presentation.
- [5] **GRANT** such further and other relief as this Court deems just and proper.
- [6] **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, 15 February 2010

WeirFoulds LLP
WEIRFOULDS LLP

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

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(Commercial Division)
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The other Petitioners listed on Schedules "A", "B" and "C"

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PROTECTION ACT, S.N.L. 2002, CHAP. E-14.02**

ORIGINAL

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Newfoundland and Labrador*

CANADA

**PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

SUPERIOR COURT

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THE PROVINCE OF NEWFOUNDLAND
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Petitioner

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 15 February 2010, between 2:41 pm and 2:42 pm (Toronto time), I received via facsimile, in two installments, 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.

15 February 2010

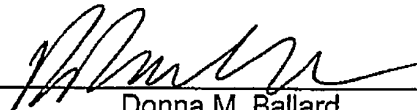

Catherine Powell
WEIRFOULDS LLP

AFFIDAVIT

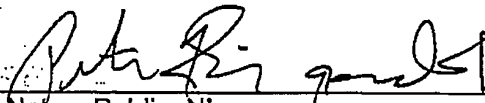
I, the undersigned, Donna M. Ballard, having my principal place of business at 4th Floor, East Block, P.O. Box 8700, St. John's, NL, A1B 4J6, solemnly declare the following:

1. I am the Director, Civil Division, Department of Justice for the Government of Newfoundland and Labrador.
2. All the facts alleged in the *Amended Motion for a Regarding Orders Issued Pursuant to the Environmental Protection Act*, S.N.L. 2002, chap. E-14.02 are true.

AND I HAVE SIGNED


Donna M. Ballard

Solemnly declared before me at St. John's,
in the Province of Newfoundland and
Labrador on the 15th day of February
2010.


Notary Public, NL



COVER

SHEET

FAX

To: Ms. Catherine Powell

Fax: (416) 365-1876

Subject:

Date: February 15, 2010

Pages: Pages 1- 27, including this cover sheet.

cc.

COMMENTS:

There are two parts to this fax, this is Part I.

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From the desk of:

Donna Ballard
Solicitor
Department of Justice - Civil Division
Director
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COVER

SHEET

FAX

To: Ms. Catherine Powell

Fax: (416) 365-1876

Subject:

Date: February 15, 2010

Pages: 1 - 36 including this cover sheet.

cc.

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