

CANADA

COURT OF APPEAL

**PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL**

No. : 500-09-020594-107

(S.C. #500-11-036133-094)

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

ABITIBIBOWATER INC., a legal person incorporated under the laws of the State of Delaware, having its principal executive offices at 1155 Metcalfe Street, in the City and District of Montréal, Province of Quebec, H3B 5H2;

And

ABITIBI-CONSOLIDATED INC., a legal person incorporated under the laws of Canada, having its principal executive offices at 1155 Metcalfe Street, in the City and District of Montréal, Province of Quebec, H3B 5H2;

And

BOWATER CANADIAN HOLDINGS INC., a legal person incorporated under the laws of the Province of Nova Scotia, having its principal executive offices at 1155 Metcalfe Street, in the City and District of Montréal, Province of Quebec, H3B 5H2;

And

the other Petitioners listed on Appendices "A", "B" and "C";

Petitioners

And

ERNST & YOUNG INC., a legal person under the laws of Canada, having a place of business at 800 René-Lévesque Blvd. West, Suite 1900, in the City and District of Montréal, Province of Quebec, H3B 1X9;

Monitor

PLAN OF ARGUMENT OF THE MONITOR

MAY 10, 2010

OVERVIEW

1. All capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the following documents:
 - (a) the Initial Order issued by the Superior Court on April 17, 2009 (as restated and amended from time to time) (the “**Initial Order**”); and
 - (b) the Thirty-Fourth Report of the Monitor dated February 19, 2010 (the “**Thirty-Fourth Report**”) which was filed with the Superior Court with respect to the motion brought by Her Majesty the Queen in the right of the Province of Newfoundland and Labrador (the “**Province**”) for a declaration regarding Orders issued pursuant to the *Environmental Protection Act*, S.N.L. 2002, c. E-14.02 (the “**EPA**”). A copy of the Thirty-Fourth Report is attached at **Tab 1**.
2. The background with respect to the Petitioners’¹ filing for and obtaining protection from their creditors under the *Companies’ Creditors Arrangement Act* (the “**CCAA**” and the “**CCAA Proceedings**”) on April 17, 2009 is set forth in detail in the Thirty-Fourth Report.
3. Pursuant to the Initial Order, Ernst & Young Inc. (“**EYI**”) was appointed as monitor of the Petitioners (the “**Monitor**”) under the CCAA.
4. On November 12, 2009, the Province, acting through the Minister of Environment and Conservation, issued five Ministerial Orders pursuant to Section 99 of the EPA (the “**EPA Orders**”) against the Petitioners. The EPA Orders relate to several locations in the Province (collectively, the “**Sites**”), all of which were

¹ “Petitioners” includes Abitibi-Consolidated Inc. (“**ACI**”) and its subsidiaries listed in Appendix “A” hereto (collectively with ACI, the “**ACI Petitioners**”) and Bowater Canadian Holdings Incorporated (“**BCHI**”) and its subsidiaries and affiliates listed in Appendix “B” hereto (collectively with BCHI, the “**Bowater Petitioners**”).

either no longer owned by the Petitioners or no longer used by the Petitioners in their business.

5. Also on November 12, 2009, the Province served a motion seeking a declaration that, among other things, the Claims Procedure Order issued by the Superior Court on August 26, 2009 shall not bar, extinguish or otherwise affect the enforceability of the EPA Orders made against the Petitioners.

THE CCAA JUDGMENT

6. The present Plan of Argument is in response to the Province's Motion for Leave to Appeal (the "**Motion**") the decision of the Honourable Justice Gascon rendered on March 31, 2010 (the "**CCAA Judgment**").
7. In rendering the CCAA Judgment, the Honourable Justice Gascon carefully reviewed and considered all of the facts and circumstances surrounding the issuance of the EPA Orders and the effect of the EPA Orders on the Petitioners' restructuring. In the end, the Honourable Justice Gascon found that the EPA Orders are claims which are financial or monetary in nature and therefore are claims that may be compromised in the CCAA Proceedings.
8. The Province is seeking leave to appeal the CCAA Judgment on the grounds that there are serious constitutional and other legal issues that should be decided which are of the utmost importance, not only to the Province, but to the practice generally.
9. The Monitor respectfully disagrees with the position taken by the Province and supports the position taken by the Petitioners in response to the Motion.
10. In summary, the Monitor is of the view that the Honourable Justice Gascon, as the presiding judge in these proceedings, carefully considered the interests of all of the stakeholders. The Monitor is also of the view that if leave to appeal is granted, it will unnecessarily lengthen the restructuring process and will hinder the ability of the Petitioners to successfully restructure.

THE ARGUMENT OF THE MONITOR

The Impact of Leave to Appeal Being Granted

11. If leave to appeal is granted, this matter will remain outstanding at the time of the meeting of creditors in the CCAA Proceedings and the vote in respect of the Petitioners' plan of arrangement or compromise, a draft of which was filed on May 4, 2010 (the "**Plan**").
12. If this matter is not finally determined prior to the vote in respect of the Plan, it will have a material impact on the net value available to creditors of the Petitioners generally.
13. The EPA Orders have the effect of compelling the Petitioners to expend material sums of money to remediate property that is either no longer owned by the Petitioners or no longer used by the Petitioners in their business and that have little or no net value to the Petitioners and their stakeholders.
14. The Monitor is of the view that the amounts at issue are likely to be material to the estates of the Petitioners and on the Petitioners' ability to effect a viable plan of arrangement among their stakeholders.
15. In addition, sources of potential exit financing will have concerns with respect to funding an enterprise carrying such a potentially burdensome obligation without any corresponding benefit for the business.
16. Further, the restructuring process will likely become more complicated, including further delays and costs, all of which will be borne by the Petitioners and their estates.
17. On the other hand, if leave to appeal is denied, the pre-filing obligations of the Petitioners in respect of the potential remediation costs under the EPA Orders will remain as compromisable obligations and, if a claim is filed on a timely basis or if allowed as a late claim, then the Province would share on a *pro rata* basis with a class of similar creditors as determined in accordance with the Plan.

The Court of Appeal Should Be Reluctant To Interfere With The CCAA Judgment

18. The law is clear that the Court of Appeal should be reluctant to interfere with a decision of the managing Superior Court Judge in the context of a CCAA restructuring.² This view has been adopted and relied upon by this Honourable Court in a number of cases including *Parc Industriel LaPrade Inc.*³, *Gyro-Trac (USA) Inc. et al.*⁴, *Papiers Gaspesia Inc.*⁵
19. An appellate court scrutinizing leave applications under the CCAA should exercise its powers sparingly and should recognize that a supervising CCAA judge conducts an ongoing management process similar to that of a judge making orders during a trial.⁶
20. In summary, a supervisory judge under the CCAA should be accorded considerable deference. His decisions will be interfered with only in the event of unreasonable acts, errors in principle or manifest errors.

The Test for Leave to Appeal

21. The Monitor also submits that the test for leave to appeal has not been met by the Province.
22. This Honourable Court frequently cites *Re Canadian Airlines*⁷ as the leading authority for the principle that the Court will not authorize an appeal of a decision

² *Blue Range Resource Corp., Re*, 1999 CarswellAlta 809 (C.A.) at para 3; *Smoky River Coal Ltd., Re*, 1999 CarswellAlta 491 (C.A.) at paras 61- 62; *Royal Bank v. Fracmaster Ltd.*, 1999 CarswellAlta 539 at para 3, at **Tabs 2, 3 and 4** respectively.

³ 2008 QCCA 2222 (QC C.A.) at **Tab 5**.

⁴ 2010 QCCA 800 (QC C.A.) at **Tab 6**.

⁵ 2004 CanLII 46685 (QC C.A.) at **Tab 7**.

⁶ *Re Pacific National Lease Holding Corp.*, 1992 CarswellBC 524 (C.A.) at para 35, as cited in *Societe Industrielle de Decolletage et D'Outillage (S.I.D.O.) Ltee*, 2010 QCCA 403 (QC C.A.) and *Blue Range Resource Corp., Re*, 2000 CarswellAlta 1145, 2000 ABCA 285 at para 8, at **Tabs 8, 9 and 10**, respectively.

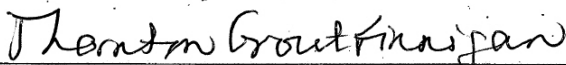
⁷ 2000 CarswellAlta 503, 2000 ABCA 149 at paras 6-7, at **Tab 11**.

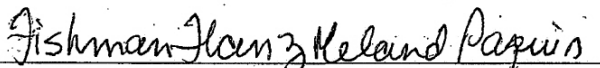
made in the context of the CCAA unless it is satisfied that "serious and arguable grounds that are of real and significant interest to the parties" are raised by the case. This inquiry is broken down into the following four questions:

- (a) whether the point in appeal is of significance to the practice;
 - (b) whether the point raised is of significance to the action itself;
 - (c) whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and
 - (d) whether the appeal will unduly hinder the progress of the action.
23. The Monitor notes that the criteria are cumulative and, therefore, permission to appeal can only be granted when all four criteria have been satisfied.⁸
24. Primarily, as stated above, the appeal will unduly hinder the progress of the action.

THE WHOLE RESPECTFULLY SUBMITTED,

Dated at Toronto this 10th day of May, 2010


THORNTON GROUT FINNIGAN LLP
Attorneys for the Monitor


FISHMAN FLANZ MELAND PAQUIN, LLP
Attorneys for the Monitor

⁸ *Papiers Gaspesia Inc. (Arrangement Relatif a)*, supra note 5, at Tab 7.

APPENDIX "A"

ABITIBI PETITIONERS

1. Abitibi-Consolidated Company of Canada
2. Abitibi-Consolidated Inc.
3. 3224112 Nova Scotia Limited
4. Marketing Donohue Inc.
5. Abitibi-Consolidated Canadian Office Products Holding Inc.
6. 3834328 Canada Inc.
7. 6169678 Canada Inc.
8. 4042140 Canada Inc.
9. Donohue Recycling Inc.
10. 1508756 Ontario Inc.
11. 3217925 Nova Scotia Company
12. La Tuque Forest Products Inc.
13. Abitibi-Consolidated Nova Scotia Incorporated
14. Saguenay Forest Products Inc.
15. Terra Nova Explorations Ltd.
16. The Jonquière Pulp Company
17. The International Bridge and Terminal Company
18. Scramble Mining Ltd.
19. 9150-3383 Quebec Inc.
20. Abitibi-Consolidated (U.K.) Inc.

APPENDIX "B"

BOWATER PETITIONERS

1. Bowater Canada Finance Corporation
2. Bowater Canadian Limited
3. Bowater Canadian Holdings. Inc.
4. 3231378 Nova Scotia Company
5. AbitibiBowater Canada Inc.
6. Bowater Canada Treasury Corporation
7. Bowater Canadian Forest Products Inc.
8. Bowater Shelburne Corporation
9. Bowater LaHave Corporation
10. St-Maurice River Drive Company Limited
11. Bowater Treated Wood Inc.
12. Canixel Hardboard Inc.
13. 9068-9050 Quebec Inc.
14. Alliance Forest Products Inc. (2001)
15. Bowater Belledune Sawmill Inc.
16. Bowater Maritimes Inc.
17. Bowater Mitis Inc.
18. Bowater Guérette Inc.
19. Bowater Couturier Inc.