

CANADA

SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

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

No. 500-11-036133-094

ABITIBIBOWATER INC.
and
ABITIBI-CONSOLIDATED INC.
and
BOWATER CANADIAN HOLDINGS INC.
and
The other petitioners listed on
Schedules "A", "B" and "C"

Petitioners

and
ERNST & YOUNG INC.

Monitor

INTERVENTION

1. Her Majesty the Queen in right of the Province of British Columbia ("HMQBC") intervenes on the motion of Her Majesty the Queen in right of the Province of Newfoundland and Labrador ("N/L") for a declaration regarding orders issued pursuant to the *Environmental Protection Act* S.N.L. 2002, chap E-14.02.
2. The debtors and their predecessors ("Abitibi") also carried on industrial activities in BC. As a result of those activities, Abitibi is a "responsible person" under the *Environmental Management Act* S.B.C. and does or may have existing or potential obligations under that Act as well as under other British Columbia enactments of general application. Some or all of those obligations are non-monetary, in that there is no requirement to pay (the "statutory non-monetary obligations").
3. In evidence in support of its intervention, HMQBC will identify British Columbia enactments material to these proceedings under which Abitibi does or may have statutory non-monetary obligations, the current status of those obligations, and the potential consequences of non-performance by Abitibi.
4. As with N/L, HMQBC is concerned about the definition of "Claim" in the Claims Procedure Order, including as that or any similar definition may be carried forward into Abitibi's proposed plan of compromise and arrangement, any vesting order(s), plan approval order or other orders in these proceedings. HMQBC takes the position that any such definition is not, as a matter of statutory interpretation, within the definition of "claim" under the *Companies' Creditors Arrangement Act* or otherwise contemplated to be subject to compromise or arrangement under that Act. Accordingly, it would be beyond the jurisdiction of this court, through any order containing or adopting any such definition, to purportedly capture, compromise, enjoin future proceedings respecting and/or extinguish any statutory non-monetary obligations arising under any provincial enactment or indeed under any other federal enactment.

5. The Attorney General of British Columbia ("AGBC") intervenes in response to the notice of intention of N/L pursuant to Article 95 of the C.C.P.
6. The AGBC is responsible under the *Constitutional Question Act*, R.S.B.C. 1996, c. 68, for responding where in a cause, matter or other proceeding, the constitutional validity or constitutional applicability of any law, including an enactment of Canada, is challenged.
7. The purpose of requiring notice of constitutional question, and of the Attorneys General appearing in response to such notice, has been expressed as follows:

In our constitutional democracy, it is the elected representatives of the people who enact legislation. While the courts have been given the power to declare invalid laws that contravene the Charter and are not saved by s. 1, this is a power not to be exercised except after the fullest opportunity has been accorded to the government to support its validity. To strike down by default a law passed by and pursuant to the act of Parliament or the legislature would work a serious injustice not only to the elected representatives who enacted it but to the people. Moreover, in this court, which has the ultimate responsibility of determining whether an impugned law is constitutionally infirm, it is important that in making that decision, we have the benefit of a record that is the result of thorough examination of the constitutional issues in the courts or tribunals from which the appeals arise.

Eaton v Brant County (1997), 142 D.L.R. (4th) 385, at para. 48

8. That purpose applies equally where the constitutionality of an enactment is challenged on the basis of division of powers under the *Constitution Act 1867*. It applies in proceedings under federal enactments as in other proceedings. It properly applies to require notice of constitutional questions in *Companies' Creditors Arrangement Act* proceedings not only to the Attorney General of Canada and of the province in which the proceedings are commenced, but to all other provincial Attorneys General as well.
9. In any event, the Attorney General of British Columbia did receive a copy of the N/L Article 95 notice, and appears as a person interested in the issues raised in that notice.
10. The AGBC intervention will be based on constitutional facts drawn from the evidence of HMQBC referred to above.
11. The grounds to be relied on by AGBC include the following:
 - (a) The *Companies' Creditors Arrangement Act* is properly interpreted in accordance with the **presumption of constitutionality**. It should not be interpreted in a manner that would exceed the proper bounds of the ability of Parliament under section 91 of the *Constitution Act 1867* to make laws on a matter of bankruptcy and insolvency. It should not be interpreted in a manner to impair the operation of a validly-enacted provincial legislative scheme and intrude into the provinces' exclusive authority under section 92 of that Act. It

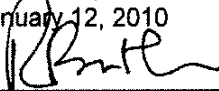
would be contrary to those principles if the *Companies' Creditors Arrangement Act* were interpreted in these proceedings to support orders based on or including the definition of "Claim" used in the Claims Procedure Order. That Act, and the definition of "claim" in that Act, are properly interpreted not to include statutory non-monetary obligations of Abitibi under any provincial enactments.

- (b) In *Companies' Creditors Arrangement Act* proceedings, the court's jurisdiction to rule provincial enactments inapplicable or inoperative is predicated on the **application of doctrines of constitutional law**. It would be contrary to those doctrines for the court (i) to give effect to a law or purpose of Parliament which is not within or necessarily incidental to the powers granted to Parliament under section 91(21) of the *Constitution Act 1867*, or (ii) to apply the *Companies' Creditors Arrangement Act* to impair the operation of provincial legislative schemes enacted pursuant to the powers granted to provinces under section 92 of the *Constitution Act 1867*. It would therefore be beyond this court's jurisdiction in these proceedings to render any provincial enactment creating statutory non-monetary statutory obligations constitutionally inapplicable to or inoperative respecting Abitibi by an order approving the definition of "Claim" as used in the Claims Procedure Order or any similar definition.
- (c) It is beyond the ability of Parliament to make laws on or necessarily incidental to matters of bankruptcy and insolvency empowering the court in proceedings under the *Companies' Creditors Arrangement Act* effectively to engage in a **judicial review of the exercise of statutory powers** under provincial enactments. It is therefore beyond the jurisdiction of this court to make orders which, directly or in effect, grant relief in the nature of *mandamus*, prohibition or *certiorari* with respect to the exercise or proposed or purported exercise of such powers, past or future, or to make declarations affecting, or enjoin (other than temporarily), any regulatory body proceedings or decisions relating to statutory non-monetary obligations of Abitibi.

12. HMQBC and the AGBC reserve the right to delete, modify or add to any of the above-stated grounds.

VICTORIA, BRITISH COLUMBIA

January 12, 2010



Ministry of Attorney General

(per Richard Butler)

Solicitors for HMQBC and AGBC