

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:

ABITIBIBOWATER 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

NOTICE OF INTENTION PURSUANT TO ARTICLE 95 OF THE C.C.P.

**(Motion for a Declaration Regarding Orders Issued Pursuant to the
Environmental Protection Act, S.N.L. 2002, Chap. E-14.02)**

TO: THE ATTORNEY GENERAL OF CANADA

AND TO: THE ATTORNEY GENERAL OF QUEBEC

AND TO: ABITIBIBOWATER INC., ABITIBI-CONSOLIDATED and
BOWATER CANADIAN HOLDINGS INC. and the other
Petitioners listed on Schedules A, B and C

AND TO: THE SERVICE LIST

TAKE NOTICE that on the return of the Motion for a Declaration Regarding Orders Issued Pursuant to the *Environmental Protection Act*, S.N.L. 2002, Chap. E-14.02, In the Matter of the Plan of Compromise or Arrangement of AbitibiBowater Inc., Abitibi-Consolidated Inc. and Bowater Canadian Holdings Inc. (together, "**Abitibi**"), the Petitioner, Her Majesty the Queen in Right of Newfoundland and Labrador ("**Province**"), intends to ask for a declaration:

- (1) that a court vested with jurisdiction over a company pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**"), as amended, does not possess the constitutional competence to exercise a statutory or discretionary power under the CCAA to bar or extinguish liabilities, obligations or duties owed by the company to a province arising out of laws enacted by the legislature of that province pursuant to s. 92 of *The Constitution Act, 1867*, 30 & 31 Victoria, c. 2 (U.K) ("**Constitution Act, 1867**"), save and except to the extent that the liability, obligation or duty is a claim provable within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("**BIA**");
- (2) that a court vested with jurisdiction over a company pursuant to the CCAA does not possess the constitutional competence to exercise a statutory or discretionary power under the CCAA to fetter the discretion of a minister of a provincial Crown under a law enacted by the province pursuant to s. 92 of *The Constitution Act, 1867*; and
- (3) in particular, that the Quebec Superior Court in this proceeding ("**CCAA Court**") does not have the constitutional competence to exercise a statutory or discretionary power under the CCAA to bar the enforcement of or to extinguish the EPA Orders (as defined below) issued by the Province or to fetter the discretion of the Minister (as defined below) under the EPA.

AND FURTHER, TAKE NOTICE that the date for hearing has not yet been fixed.

The pretensions of the Province and the grounds relied upon are as follows:

1. On 17 April 2009, this Honourable Court, sitting as the CCAA Court, issued an initial order in respect of Abitibi in the within proceedings pursuant to a discretionary power given to the CCAA Court under s. 11 of the CCAA ("**Initial Order**").
2. The CCAA Court has since issued a number of additional orders in the within proceedings using its s. 11 discretion, including the First Stay Extension Order dated 14 May 2009 and the Claims Procedure Order dated 26 August 2009.
3. The First Stay Extension Order amended the Initial Order to make explicit that the stay of proceedings imposed by the Initial Order could not be interpreted to prevent the federal or provincial governments from requiring Abitibi to comply with federal or provincial legislation relating to public health, safety, security, public order or the environment, other than orders requiring Abitibi to pay money or fines to the government.
4. Abitibi carried on industrial activity in the Province since at least 1905. As a result of this industrial activity, Abitibi has incurred statutory liabilities, obligations or duties to the Province under the *Environmental Protection Act*, S.N.L. 2002, chap. E-14.02 ("**EPA**").
5. The EPA is a provincial law of general application that falls within the exclusive jurisdiction given to the Province under s. 92 of the Constitution Act, 1867, including one or more of the following Classes of Subjects:
 - section 92(5) (The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon);
 - section 92(13) (Property and Civil Rights in the Province);
 - section 92(15) (The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section); and

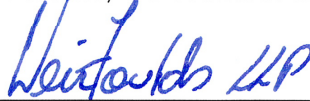
- section 92(16) (Generally all Matters of a merely local or private Nature in the Province).
6. Section 99 of the EPA permits the Minister of Environment and Conservation of the Province ("**Minister**") to issue orders requiring a person, at that person's own expense, to act or to refrain from acting in relation to matters described in the EPA ("**EPA Orders**"). EPA Orders are an integral part of the regulatory scheme established by the EPA.
 7. On 12 November 2009, the Minister issued EPA Orders against Abitibi-Consolidated Inc., one of the debtor companies herein. The EPA Orders do not require or impose on Abitibi any liability, obligation or duty to pay money to the Province. In particular, the EPA Orders are not claims provable within the meaning of s. 2 of the BIA.
 8. The Claims Procedure Order purports to bar, extinguish or otherwise affect the enforceability of the EPA Orders by (i) barring or extinguishing liabilities, obligations or duties owed by Abitibi to any province pursuant to any provincial law that do not constitute claims provable within the meaning of s. 2 of the BIA, and (ii) fettering the discretion given to a Minister of a provincial Crown under provincial law to order Abitibi to comply with provincial law.
 9. To the extent the Claims Procedure Order has the legal effect described in paragraph 8 above, or to the extent the CCAA Court has exercised or purports to exercise a discretionary power pursuant to the CCAA to effect this result (such as by granting the relief sought by Abitibi in its Contestation filed in respect of the within motion), the Claims Procedure Order or the exercise of this discretionary power is in pith and substance outside Parliament's jurisdiction over Bankruptcy and Insolvency under s. 91(21) of the Constitution Act, 1867 and is thus *ultra vires*.
 10. By barring and extinguishing liabilities, obligations or duties owed by Abitibi to a province arising out of provincial law that are not claims provable within the meaning of s. 2 of the BIA, or by fettering the discretion given to a Minister of a provincial Crown under provincial law to order Abitibi to comply with provincial law, the Claims Procedure Order, or the CCAA Court's exercise or purported exercise of a discretionary power pursuant to the CCAA, impairs a vital aspect of Matters that are within the Classes of Subjects within the exclusive jurisdiction of the legislatures of each province pursuant to s. 92 of the Constitution Act, 1867, including:

- section 92(5) (The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon);
- section 92(13) (Property and Civil Rights in the Province);
- section 92(15) (The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section);
- section 92(16) (Generally all Matters of a merely local or private Nature in the Province); and
- section 92A (Non-Renewable Natural Resources, Forestry Resources and Electrical Energy).

11. Similarly, by fettering or purporting to fetter the discretion given to a minister of a provincial Crown under provincial law, the Claims Procedure Order, or the CCAA Court's exercise or purported exercise of a discretionary power pursuant to the CCAA, impermissibly interferes with and undermines the executive powers that are vested exclusively in the Lieutenant Governor of each province and exercised by the responsible minister.
12. The Claims Procedure Order or the CCAA Court's exercise or purported exercise of a discretionary power pursuant to the CCAA is thus inapplicable to the legal or statutory duties owed by Abitibi to the Province pursuant to s. 99 of the EPA.

GOVERN YOURSELF ACCORDINGLY.

Toronto, 4 December 2009



WEIRFOULDS LLP

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

SUPERIOR COURT (Commercial Division) DISTRICT OF MONTREAL No.: 500-11-036133-094	
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 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
NOTICE OF INTENTION PURSUANT TO ARTICLE 95 OF THE C.C.P.	
WEIRFOULDS LLP Barristers & Solicitors P.O. Box 480, Suite 1600, The Exchange Tower 130 King Street West, Toronto, ON M5X 1J5 Tel: 416-365-1110 Fax: 416-365-1876 <i>Attorneys for Her Majesty the Queen in Right of the Province of Newfoundland and Labrador</i>	

A