TAB A

PP. 2, 27-29,
129, 169

CANADA

CONSOLIDATION

CODIFICATION

Bankruptcy and Insolvency Act

Loi sur la faillite et l'insolvabilité

CHAPTER B-3

CHAPITRE B-3

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"bankruptcy" « *faillite* »

"bankruptcy" means the state of being bankrupt or the fact of becoming bankrupt;

"bargaining agent" « *agent négociateur* »

"bargaining agent" means any trade union that has entered into a collective agreement on behalf of the employees of a person;

"child" [Repealed, 2000, c. 12, s. 8]

"claim provable in bankruptcy", "provable claim" or "claim provable" « *réclamation prouvable en matière de faillite* » ou « *réclamation prouvable* »

"claim provable in bankruptcy", "provable claim" or "claim provable" includes any claim or liability provable in proceedings under this Act by a creditor;

"collective agreement" « *convention collective* »

"collective agreement", in relation to an insolvent person, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the insolvent person and a bargaining agent;

"common-law partner" « *conjoint de fait* »

"common-law partner", in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year;

"common-law partnership" « *union de fait* »

"common-law partnership" means the relationship between two persons who are common-law partners of each other;

"corporation" « *personne morale* »

"corporation" means a company or legal person that is incorporated by or under an Act of Parliament or of the legislature of a province, an incorporated company, wherever incorporated, that is authorized to carry on business in Canada or has an office or property in Canada or an income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, insurance companies, trust companies, loan companies or railway companies;

"court" « *tribunal* »

"court", except in paragraphs 178(1)(*a*) and (*a.1*) and sections 204.1 to 204.3, means a court referred to in subsection 183(1) or (1.1) or a judge of that court, and includes a registrar when exercising the powers of the court conferred on a registrar under this Act;

"creditor" « *créancier* »

"creditor" means a person having a claim provable as a claim under this Act;

"current assets" « *actif à court terme* »

"current assets" means cash, cash equivalents — including negotiable instruments and demand deposits — inventory or accounts receiv-

« banque » "*bank*"

« banque »

a) Les banques et les banques étrangères autorisées, au sens de l'article 2 de la *Loi sur les banques*;

b) les membres de l'Association canadienne des paiements créée par la *Loi canadienne sur les paiements*;

c) les sociétés coopératives de crédit locales définies au paragraphe 2(1) de la loi mentionnée à l'alinéa *b*) et affiliées à une centrale — au sens du même paragraphe — qui est elle-même membre de cette association.

« bien » "*property*"

« bien » Bien de toute nature, qu'il soit situé au Canada ou ailleurs. Sont compris parmi les biens les biens personnels et réels, en droit ou en equity, les sommes d'argent, marchandises, choses non possessoires et terres, ainsi que les obligations, servitudes et toute espèce de domaines, d'intérêts ou de profits, présents ou futurs, acquis ou éventuels, sur des biens, ou en provenant ou s'y rattachant.

« biens » [Abrogée, 2004, ch. 25, art. 7]

« biens aéronautiques » "*aircraft objects*"

« biens aéronautiques » S'entend au sens du paragraphe 2(1) de la *Loi sur les garanties internationales portant sur des matériels d'équipement mobiles (matériels d'équipement aéronautiques)*.

« cession » "*assignment*"

« cession » Cession déposée chez le séquestre officiel.

« conjoint de fait » "*common-law partner*"

« conjoint de fait » La personne qui vit avec la personne en cause dans une relation conjugale depuis au moins un an.

« conseiller juridique » "*legal counsel*"

« conseiller juridique » Toute personne qualifiée, en vertu du droit de la province, pour donner des avis juridiques.

« contrat financier admissible » "*eligible financial contract*"

« contrat financier admissible » Contrat d'une catégorie prescrite.

« convention collective » "*collective agreement*"

« convention collective » S'agissant d'une personne insolvable, s'entend au sens donné à ce terme par les règles de droit applicables aux négociations collectives entre elle et l'agent négociateur.

« créancier » "*creditor*"

« créancier » Personne titulaire d'une réclamation prouvable à ce titre sous le régime de la présente loi.

able, or the proceeds from any dealing with those assets;

"date of the bankruptcy" « *date de la faillite* »

"date of the bankruptcy", in respect of a person, means the date of

(*a*) the granting of a bankruptcy order against the person,

(*b*) the filing of an assignment in respect of the person, or

(*c*) the event that causes an assignment by the person to be deemed;

"date of the initial bankruptcy event" « *ouverture de la faillite* »

"date of the initial bankruptcy event", in respect of a person, means the earliest of the day on which any one of the following is made, filed or commenced, as the case may be:

(*a*) an assignment by or in respect of the person,

(*b*) a proposal by or in respect of the person,

(*c*) a notice of intention by the person,

(*d*) the first application for a bankruptcy order against the person, in any case

(i) referred to in paragraph 50.4(8)(*a*) or 57(*a*) or subsection 61(2), or

(ii) in which a notice of intention to make a proposal has been filed under section 50.4 or a proposal has been filed under section 62 in respect of the person and the person files an assignment before the court has approved the proposal,

(*e*) the application in respect of which a bankruptcy order is made, in the case of an application other than one referred to in paragraph (*d*), or

(*f*) proceedings under the *Companies' Creditors Arrangement Act*;

"debtor" « *débiteur* »

"debtor" includes an insolvent person and any person who, at the time an act of bankruptcy was committed by him, resided or carried on business in Canada and, where the context requires, includes a bankrupt;

"director" « *administrateur* »

"director" in respect of a corporation other than an income trust, means a person occupying the position of director by whatever name called and, in the case of an income trust, a person occupying the position of trustee by whatever name called;

« créancier garanti » *"secured creditor"*

« créancier garanti » Personne titulaire d'une hypothèque, d'un gage, d'une charge ou d'un privilège sur ou contre les biens du débiteur ou une partie de ses biens, à titre de garantie d'une dette échue ou à échoir, ou personne dont la réclamation est fondée sur un effet de commerce ou garantie par ce dernier, lequel effet de commerce est détenu comme garantie subsidiaire et dont le débiteur n'est responsable qu'indirectement ou secondairement. S'entend en outre :

a) de la personne titulaire, selon le *Code civil du Québec* ou les autres lois de la province de Québec, d'un droit de rétention ou d'une priorité constitutive de droit réel sur ou contre les biens du débiteur ou une partie de ses biens;

b) lorsque l'exercice de ses droits est assujetti aux règles prévues pour l'exercice des droits hypothécaires au livre sixième du *Code civil du Québec* intitulé *Des priorités et des hypothèques* :

(i) de la personne qui vend un bien au débiteur, sous condition ou à tempérament,

(ii) de la personne qui achète un bien au débiteur avec faculté de rachat en faveur de celui-ci,

(iii) du fiduciaire d'une fiducie constituée par le débiteur afin de garantir l'exécution d'une obligation.

« date de la faillite » *"date of the bankruptcy"*

« date de la faillite » S'agissant d'une personne, la date :

a) soit de l'ordonnance de faillite la visant;

b) soit du dépôt d'une cession de biens la visant;

c) soit du fait sur la base duquel elle est réputée avoir fait une cession de biens.

« débiteur » *"debtor"*

« débiteur » Sont assimilées à un débiteur toute personne insolvable et toute personne qui, à l'époque où elle a commis un acte de faillite, résidait au Canada ou y exerçait des activités. S'entend en outre, lorsque le contexte l'exige, d'un failli.

« disposition » [Abrogée, 2005, ch. 47, art. 2]

« enfant » [Abrogée, 2000, ch. 12, art. 8]

« entreprise de service public » *"public utility"*

« entreprise de service public » Vise notamment la personne ou l'organisme qui fournit du combustible, de l'eau ou de l'électricité, un service "eligible financial contract" « *contrat financier admissible* »

"eligible financial contract" means an agreement of a prescribed kind;

"equity claim" « *réclamation relative à des capitaux propres* »

"equity claim" means a claim that is in respect of an equity interest, including a claim for, among others,

(*a*) a dividend or similar payment,

(*b*) a return of capital,

(*c*) a redemption or retraction obligation,

(*d*) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or

(*e*) contribution or indemnity in respect of a claim referred to in any of paragraphs (*a*) to (*d*);

"equity interest" « *intérêt relatif à des capitaux propres* »

"equity interest" means

(*a*) in the case of a corporation other than an income trust, a share in the corporation — or a warrant or option or another right to acquire a share in the corporation — other than one that is derived from a convertible debt, and

(*b*) in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt;

"executing officer" « *huissier-exécutant* »

"executing officer" includes a sheriff, a bailiff and any officer charged with the execution of a writ or other process under this Act or any other Act or proceeding with respect to any property of a debtor;

"financial collateral" « *garantie financière* »

"financial collateral" means any of the following that is subject to an interest, or in the Province of Quebec a right, that secures payment or performance of an obligation in respect of an eligible financial contract or that is subject to a title transfer credit support agreement:

(*a*) cash or cash equivalents, including negotiable instruments and demand deposits,

(*b*) securities, a securities account, a securities entitlement or a right to acquire securities, or

de télécommunications, d'enlèvement des ordures ou de lutte contre la pollution ou encore des services postaux.

« failli » *"bankrupt"*

« failli » Personne qui a fait une cession ou contre laquelle a été rendue une ordonnance de faillite. Peut aussi s'entendre de la situation juridique d'une telle personne.

« faillite » *"bankruptcy"*

« faillite » L'état de faillite ou le fait de devenir en faillite.

« fiducie de revenu » *"income trust"*

« fiducie de revenu » Fiducie qui possède un actif au Canada et dont les parts sont inscrites à une bourse de valeurs mobilières visée par les Règles générales à la date de l'ouverture de la faillite, ou sont détenues en majorité par une fiducie dont les parts sont inscrites à une telle bourse à cette date.

« garantie financière » *"financial collateral"*

« garantie financière » S'il est assujetti soit à un intérêt ou, dans la province de Québec, à un droit garantissant le paiement d'une somme ou l'exécution d'une obligation relativement à un contrat financier admissible, soit à un accord de transfert de titres pour obtention de crédit, l'un ou l'autre des éléments suivants :

a) les sommes en espèces et les équivalents de trésorerie — notamment les effets négociables et dépôts à vue;

b) les titres, comptes de titres, droits intermédiés et droits d'acquérir des titres;

c) les contrats à terme ou comptes de contrats à terme.

« huissier-exécutant » *"sheriff"*

« huissier-exécutant » Shérif, huissier ou autre personne chargée de l'exécution d'un bref ou autre procédure sous l'autorité de la présente loi ou de toute autre loi, ou de toute autre procédure relative aux biens du débiteur.

« intérêt relatif à des capitaux propres » *"equity interest"*

« intérêt relatif à des capitaux propres »

a) S'agissant d'une personne morale autre qu'une fiducie de revenu, action de celle-ci ou bon de souscription, option ou autre droit permettant d'acquérir une telle action et ne provenant pas de la conversion d'une dette convertible;

b) s'agissant d'une fiducie de revenu, part de celle-ci ou bon de souscription, option ou autre droit permettant d'acquérir une telle part et ne provenant pas de la conversion d'une dette convertible.

(*c*) a futures agreement or a futures account;

"General Rules" « *Règles générales* »

"General Rules" means the General Rules referred to in section 209;

"income trust" « *fiducie de revenu* »

"income trust" means a trust that has assets in Canada if

(*a*) its units are listed on a prescribed stock exchange on the date of the initial bankruptcy event, or

(*b*) the majority of its units are held by a trust whose units are listed on a prescribed stock exchange on the date of the initial bankruptcy event;

"insolvent person" « *personne insolvable* »

"insolvent person" means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(*a*) who is for any reason unable to meet his obligations as they generally become due,

(*b*) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(*c*) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

"legal counsel" « *conseiller juridique* »

"legal counsel" means any person qualified, in accordance with the laws of a province, to give legal advice;

"locality of a debtor" « *localité* »

"locality of a debtor" means the principal place

(*a*) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(*b*) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(*c*) in cases not coming within paragraph (*a*) or (*b*), where the greater portion of the property of the debtor is situated;

"Minister" « *ministre* »

"Minister" means the Minister of Industry;

"net termination value" « *valeurs nettes dues à la date de résiliation* »

"net termination value" means the net amount obtained after netting or setting off or compensating the mutual obligations between the par-

« localité » "*locality of a debtor*"

« localité » En parlant d'un débiteur, le lieu principal où, selon le cas :

a) il a exercé ses activités au cours de l'année précédant l'ouverture de sa faillite;

b) il a résidé au cours de l'année précédant l'ouverture de sa faillite;

c) se trouve la plus grande partie de ses biens, dans les cas non visés aux alinéas *a*) ou *b*).

« localité d'un débiteur » [Abrogée, 2005, ch. 47, art. 2(F)]

« ministre » "*Minister*"

« ministre » Le ministre de l'Industrie.

« moment de la faillite » "*time of the bankruptcy*"

« moment de la faillite » S'agissant d'une personne, le moment :

a) soit du prononcé de l'ordonnance de faillite la visant;

b) soit du dépôt d'une cession de biens la visant;

c) soit du fait sur la base duquel elle est réputée avoir fait une cession de biens.

« opération sous-évaluée » "*transfer at undervalue*"

« opération sous-évaluée » Toute disposition de biens ou fourniture de services pour laquelle le débiteur ne reçoit aucune contrepartie ou en reçoit une qui est manifestement inférieure à la juste valeur marchande de celle qu'il a lui-même donnée.

« ouverture de la faillite » "*date of the initial bankruptcy event*"

« ouverture de la faillite » Relativement à une personne, le premier en date des événements suivants à survenir :

a) le dépôt d'une cession de biens la visant;

b) le dépôt d'une proposition la visant;

c) le dépôt d'un avis d'intention par elle;

d) le dépôt de la première requête en faillite :

(i) dans les cas visés aux alinéas 50.4(8) *a*) et 57 *a*) et au paragraphe 61(2),

(ii) dans le cas où la personne, alors qu'elle est visée par un avis d'intention déposé aux termes de l'article 50.4 ou une proposition déposée aux termes de l'article 62, fait une cession avant que le tribunal ait approuvé la proposition;

ties to an eligible financial contract in accordance with its provisions;

"official receiver" *« séquestre officiel »*

"official receiver" means an officer appointed under subsection 12(2);

"person" *« personne »*

"person" includes a partnership, an unincorporated association, a corporation, a cooperative society or a cooperative organization, the successors of a partnership, of an association, of a corporation, of a society or of an organization and the heirs, executors, liquidators of the succession, administrators or other legal representatives of a person;

"prescribed" *« prescrit »*

"prescribed"

(*a*) in the case of the form of a document that is by this Act to be prescribed and the information to be given therein, means prescribed by directive issued by the Superintendent under paragraph 5(4)(*e*), and

(*b*) in any other case, means prescribed by the General Rules;

"property" *« bien »*

"property" means any type of property, whether situated in Canada or elsewhere, and includes money, goods, things in action, land and every description of property, whether real or personal, legal or equitable, as well as obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, in, arising out of or incident to property;

"proposal" *« proposition concordataire » ou « proposition »*

"proposal" means

(*a*) in any provision of Division I of Part III, a proposal made under that Division, and

(*b*) in any other provision, a proposal made under Division I of Part III or a consumer proposal made under Division II of Part III

and includes a proposal or consumer proposal, as the case may be, for a composition, for an extension of time or for a scheme or arrangement;

"public utility" *« entreprise de service public »*

"public utility" includes a person or body who supplies fuel, water or electricity, or supplies telecommunications, garbage collection, pollution control or postal services;

e) dans les cas non visés à l'alinéa *d*), le dépôt de la requête à l'égard de laquelle une ordonnance de faillite est rendue;

f) l'introduction d'une procédure sous le régime de la *Loi sur les arrangements avec les créanciers des compagnies*.

« personne » *"person"*

« personne »

a) Sont assimilés aux personnes les sociétés de personnes, associations non constituées en personne morale, personnes morales, sociétés et organisations coopératives, ainsi que leurs successeurs;

b) sont par ailleurs assimilés aux personnes leurs héritiers, liquidateurs de succession, exécuteurs testamentaires, administrateurs et autres représentants légaux.

« personne insolvable » *"insolvent person"*

« personne insolvable » Personne qui n'est pas en faillite et qui réside au Canada ou y exerce ses activités ou qui a des biens au Canada, dont les obligations, constituant à l'égard de ses créanciers des réclamations prouvables aux termes de la présente loi, s'élèvent à mille dollars et, selon le cas :

a) qui, pour une raison quelconque, est incapable de faire honneur à ses obligations au fur et à mesure de leur échéance;

b) qui a cessé d'acquitter ses obligations courantes dans le cours ordinaire des affaires au fur et à mesure de leur échéance;

c) dont la totalité des biens n'est pas suffisante, d'après une juste estimation, ou ne suffirait pas, s'il en était disposé lors d'une vente bien conduite par autorité de justice, pour permettre l'acquittement de toutes ses obligations échues ou à échoir.

« personne morale » *"corporation"*

« personne morale » Personne morale qui est autorisée à exercer des activités au Canada ou qui y a un établissement ou y possède des biens, ainsi que toute fiducie de revenu. Sont toutefois exclues les banques, banques étrangères autorisées au sens de l'article 2 de la *Loi sur les banques*, compagnies d'assurance, sociétés de fiducie, sociétés de prêt ou compagnies de chemin de fer constituées en personnes morales.

« prescrit » *"prescribed"*

« prescrit »

a) Dans le cas de la forme de documents à prescrire au titre de la présente loi et des ren-

"resolution" or "ordinary resolution" *« résolution » ou « résolution ordinaire »*

"resolution" or "ordinary resolution" means a resolution carried in the manner provided by section 115;

"secured creditor" *« créancier garanti »*

"secured creditor" means a person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that property as security for a debt due or accruing due to the person from the debtor, or a person whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable, and includes

(*a*) a person who has a right of retention or a prior claim constituting a real right, within the meaning of the *Civil Code of Québec* or any other statute of the Province of Quebec, on or against the property of the debtor or any part of that property, or

(*b*) any of

(i) the vendor of any property sold to the debtor under a conditional or instalment sale,

(ii) the purchaser of any property from the debtor subject to a right of redemption, or

(iii) the trustee of a trust constituted by the debtor to secure the performance of an obligation,

if the exercise of the person's rights is subject to the provisions of Book Six of the *Civil Code of Québec* entitled *Prior Claims and Hypothecs* that deal with the exercise of hypothecary rights;

"settlement" [Repealed, 2005, c. 47, s. 2]

"shareholder" *« actionnaire »*

"shareholder" includes a member of a corporation — and, in the case of an income trust, a holder of a unit in an income trust — to which this Act applies;

"sheriff" [Repealed, 2004, c. 25, s. 7]

"special resolution" *« résolution spéciale »*

"special resolution" means a resolution decided by a majority in number and three-fourths in value of the creditors with proven claims present, personally or by proxy, at a meeting of creditors and voting on the resolution;

"Superintendent" *« surintendant »*

"Superintendent" means the Superintendent of Bankruptcy appointed under subsection 5(1);

seignements qui doivent y figurer, prescrit par le surintendant en application de l'alinéa 5(4) *e*);

b) dans les autres cas, prescrit par les Règles générales.

« proposition concordataire » ou « proposition » *"proposal"*

« proposition concordataire » ou « proposition » S'entend :

a) à la section I de la partie III, de la proposition faite au titre de cette section;

b) dans le reste de la présente loi, de la proposition faite au titre de la section I de la partie III ou d'une proposition de consommateur faite au titre de la section II de la partie III.

Est également visée la proposition ou proposition de consommateur faite en vue d'un concordat, d'un atermoiement ou d'un accommodement.

« réclamation prouvable en matière de faillite » ou « réclamation prouvable » *"claim provable in bankruptcy", "provable claim" or "claim provable"*

« réclamation prouvable en matière de faillite » ou « réclamation prouvable » Toute réclamation ou créance pouvant être prouvée dans des procédures intentées sous l'autorité de la présente loi par un créancier.

« réclamation relative à des capitaux propres » *"equity claim"*

« réclamation relative à des capitaux propres » Réclamation portant sur un intérêt relatif à des capitaux propres et visant notamment :

a) un dividende ou un paiement similaire;

b) un remboursement de capital;

c) tout droit de rachat d'actions au gré de l'actionnaire ou de remboursement anticipé d'actions au gré de l'émetteur;

d) des pertes pécuniaires associées à la propriété, à l'achat ou à la vente d'un intérêt relatif à des capitaux propres ou à l'annulation de cet achat ou de cette vente;

e) une contribution ou une indemnité relative à toute réclamation visée à l'un des alinéas *a*) à *d*).

« Règles générales » *"General Rules"*

« Règles générales » Les Règles générales établies en application de l'article 209.

« résolution » ou « résolution ordinaire » *"resolution" or "ordinary resolution"*

« résolution » ou « résolution ordinaire » Résolution adoptée conformément à l'article 115.

"Superintendent of Financial Institutions" *« surintendant des institutions financières »*

"Superintendent of Financial Institutions" means the Superintendent of Financial Institutions appointed under subsection 5(1) of the *Office of the Superintendent of Financial Institutions Act*;

"time of the bankruptcy" *« moment de la faillite »*

"time of the bankruptcy", in respect of a person, means the time of

(*a*) the granting of a bankruptcy order against the person,

(*b*) the filing of an assignment by or in respect of the person, or

(*c*) the event that causes an assignment by the person to be deemed;

"title transfer credit support agreement" *« accord de transfert de titres pour obtention de crédit »*

"title transfer credit support agreement" means an agreement under which an insolvent person or a bankrupt has provided title to property for the purpose of securing the payment or performance of an obligation of the insolvent person or bankrupt in respect of an eligible financial contract;

"transfer at undervalue" *« opération sous-évaluée »*

"transfer at undervalue" means a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor;

"trustee" or "licensed trustee" *« syndic » ou « syndic autorisé »*

"trustee" or "licensed trustee" means a person who is licensed or appointed under this Act.

R.S., 1985, c. B-3, s. 2; R.S., 1985, c. 31 (1st Supp.), s. 69; 1992, c. 1, s. 145(F), c. 27, s. 3; 1995, c. 1, s. 62; 1997, c. 12, s. 1; 1999, c. 28, s. 146, c. 31, s. 17; 2000, c. 12, s. 8; 2001, c. 4, s. 25, c. 9, s. 572; 2004, c. 25, s. 7; 2005, c. 3, s. 11, c. 47, s. 2; 2007, c. 29, s. 91, c. 36, s. 1.

« résolution spéciale » *"special resolution"*

« résolution spéciale » Résolution décidée par une majorité en nombre et une majorité des trois quarts en valeur des créanciers titulaires de réclamations prouvées, présents personnellement ou représentés par fondés de pouvoir à une assemblée des créanciers et votant sur la résolution.

« séquestre officiel » *"official receiver"*

« séquestre officiel » Fonctionnaire nommé en vertu du paragraphe 12(2).

« surintendant » *"Superintendent"*

« surintendant » Le surintendant des faillites nommé aux termes du paragraphe 5(1).

« surintendant des institutions financières » *"Superintendent of Financial Institutions"*

« surintendant des institutions financières » Le surintendant des institutions financières nommé en application du paragraphe 5(1) de la *Loi sur le Bureau du surintendant des institutions financières*.

« syndic » ou « syndic autorisé » *"trustee" or "licensed trustee"*

« syndic » ou « syndic autorisé » Personne qui détient une licence ou est nommée en vertu de la présente loi.

« tribunal » *"court"*

« tribunal » Sauf aux alinéas 178(1)*a*) et *a.1*) et aux articles 204.1 à 204.3, tout tribunal mentionné aux paragraphes 183(1) ou (1.1). Y est assimilé tout juge de ce tribunal ainsi que le greffier ou le registraire de celui-ci, lorsqu'il exerce les pouvoirs du tribunal qui lui sont conférés au titre de la présente loi.

« union de fait » *"common-law partnership"*

« union de fait » Relation qui existe entre deux conjoints de fait.

« valeurs nettes dues à la date de résiliation » *"net termination value"*

« valeurs nettes dues à la date de résiliation » La somme nette obtenue après compensation des obligations mutuelles des parties à un contrat financier admissible effectuée conformément à ce contrat.

L.R. (1985), ch. B-3, art. 2; L.R. (1985), ch. 31 (1er suppl.), art. 69; 1992, ch. 1, art. 145(F), ch. 27, art. 3; 1995, ch. 1, art. 62; 1997, ch. 12, art. 1; 1999, ch. 28, art. 146, ch. 31, art. 17; 2000, ch. 12, art. 8; 2001, ch. 4, art. 25, ch. 9, art. 572; 2004, ch. 25, art. 7; 2005, ch. 3, art. 11, ch. 47, art. 2; 2007, ch. 29, art. 91, ch. 36, art. 1.

Designation of beneficiary

2.1 A change in the designation of a beneficiary in an insurance contract is deemed to be a disposition of property for the purpose of this Act.

1997, c. 12, s. 2; 2004, c. 25, s. 8; 2005, c. 47, s. 3.

Désignation de bénéficiaires

2.1 La modification de la désignation du bénéficiaire d'une police d'assurance est réputée être une disposition de biens pour l'application de la présente loi.

1997, ch. 12, art. 2; 2004, ch. 25, art. 8; 2005, ch. 47, art. 3.

Superintendent's division office

2.2 Any notification, document or other information that is required by this Act to be given, forwarded, mailed, sent or otherwise provi-

Bureau de division

2.2 Sauf dans le cas de la demande de licence prévue au paragraphe 13(1), les notifications et envois de documents ou renseigneof the debtor or in respect of a pension plan for the benefit of those employees; and

(*b*) that exists before the trustee is appointed or that is calculated by reference to a period before the appointment.

Status of liability

(1.3) A liability referred to in subsection (1.2) is not to rank as costs of administration.

Liability of other successor employers

(1.4) Subsection (1.2) does not affect the liability of a successor employer other than the trustee.

Liability in respect of environmental matters

(2) Notwithstanding anything in any federal or provincial law, a trustee is not personally liable in that position for any environmental condition that arose or environmental damage that occurred

(*a*) before the trustee's appointment; or

(*b*) after the trustee's appointment unless it is established that the condition arose or the damage occurred as a result of the trustee's gross negligence or wilful misconduct or, in the Province of Quebec, the trustee's gross or intentional fault.

Reports, etc., still required

(3) Nothing in subsection (2) exempts a trustee from any duty to report or make disclosure imposed by a law referred to in that subsection.

Non-liability re certain orders

(4) Notwithstanding anything in any federal or provincial law but subject to subsection (2), where an order is made which has the effect of requiring a trustee to remedy any environmental condition or environmental damage affecting property involved in a bankruptcy, proposal or receivership, the trustee is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,

(*a*) if, within such time as is specified in the order, within ten days after the order is made if no time is so specified, within ten days after the appointment of the trustee, if the order is in effect when the trustee is appointed, or during the period of the stay referred to in paragraph (*b*), the trustee

(i) complies with the order, or

(ii) on notice to the person who issued the order, abandons, disposes of or otherwise

décesseurs, ou découle d'un régime de pension pour le bénéfice de ces employés;

b) existait avant sa nomination ou est calculée sur la base d'une période la précédant.

(1.3) L'obligation visée au paragraphe (1.2) ne peut être imputée à l'actif au titre des frais d'administration.

Obligation exclue des frais

(1.4) Le paragraphe (1.2) ne dégage aucun employeur successeur, autre que le syndic, de sa responsabilité.

Responsabilité de l'employeur successeur

(2) Par dérogation au droit fédéral et provincial, le syndic est, ès qualités, dégagé de toute responsabilité personnelle découlant de tout fait ou dommage lié à l'environnement survenu avant ou après sa nomination, sauf celui causé par sa négligence grave ou son inconduite délibérée ou, dans la province de Québec, par sa faute lourde ou intentionnelle.

Responsabilité en matière d'environnement

(3) Le paragraphe (2) n'a pas pour effet de soustraire le syndic à une obligation de faire rapport ou de communiquer des renseignements prévue par le droit applicable en l'espèce.

Rapports

(4) Par dérogation au droit fédéral et provincial, mais sous réserve du paragraphe (2), le syndic est, ès qualités, dégagé de toute responsabilité personnelle découlant du non-respect de toute ordonnance de réparation de tout fait ou dommage lié à l'environnement et touchant un bien visé par une faillite, une proposition ou une mise sous séquestre administrée par un séquestre, et de toute responsabilité personnelle relativement aux frais engagés par toute personne exécutant l'ordonnance :

Immunité — ordonnances

a) si, dans les dix jours suivant l'ordonnance ou dans le délai fixé par celle-ci, dans les dix jours suivant sa nomination si l'ordonnance est alors en vigueur ou pendant la durée de la suspension visée à l'alinéa *b*) :

(i) il s'y conforme,

(ii) il abandonne, après avis à la personne ayant rendu l'ordonnance, tout droit sur l'immeuble en cause ou tout intérêt sur le releases any interest in any real property, or any right in any immovable, affected by the condition or damage;

(*b*) during the period of a stay of the order granted, on application made within the time specified in the order referred to in paragraph (*a*), within ten days after the order is made or within ten days after the appointment of the trustee, if the order is in effect when the trustee is appointed, by

(i) the court or body having jurisdiction under the law pursuant to which the order was made to enable the trustee to contest the order, or

(ii) the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

(*c*) if the trustee had, before the order was made, abandoned or renounced or been divested of any interest in any real property, or any right in any immovable, affected by the condition or damage.

Stay may be granted

(5) The court may grant a stay of the order referred to in subsection (4) on such notice and for such period as the court deems necessary for the purpose of enabling the trustee to assess the economic viability of complying with the order.

Costs for remedying not costs of administration

(6) If the trustee has abandoned or renounced any interest in any real property, or any right in any immovable, affected by the environmental condition or environmental damage, claims for costs of remedying the condition or damage shall not rank as costs of administration.

Priority of claims

(7) Any claim by Her Majesty in right of Canada or a province against the debtor in a bankruptcy, proposal or receivership for costs of remedying any environmental condition or environmental damage affecting real property or an immovable of the debtor is secured by security on the real property or immovable affected by the environmental condition or environmental damage and on any other real property or immovable of the debtor that is contiguous with that real property or immovable and that is related to the activity that caused the environmental condition or environmental damage, and the security

bien réel en cause, en dispose ou s'en dessaisit;

b) pendant la durée de la suspension de l'ordonnance qui est accordée, sur demande présentée dans les dix jours suivant l'ordonnance visée à l'alinéa *a*) ou dans le délai fixé par celle-ci, ou dans les dix jours suivant sa nomination si l'ordonnance est alors en vigueur :

(i) soit par le tribunal ou l'autorité qui a compétence relativement à l'ordonnance, en vue de permettre au syndic de la contester,

(ii) soit par le tribunal qui a compétence en matière de faillite, en vue d'évaluer les conséquences économiques du respect de l'ordonnance;

c) si, avant que l'ordonnance ne soit rendue, il avait abandonné tout droit sur l'immeuble en cause ou tout intérêt sur le bien réel en cause ou y avait renoncé, ou s'en était dessaisi.

Suspension

(5) En vue de permettre au syndic d'évaluer les conséquences économiques du respect de l'ordonnance, le tribunal peut en ordonner la suspension après avis et pour la période qu'il estime indiqués.

Frais

(6) Si le syndic a abandonné tout droit sur l'immeuble en cause ou tout intérêt sur le bien réel en cause ou y a renoncé, les réclamations pour les frais de réparation du fait ou dommage lié à l'environnement et touchant le bien ne font pas partie des frais d'administration.

Priorité des réclamations

(7) En cas de faillite, de proposition ou de mise sous séquestre administrée par un séquestre, toute réclamation de Sa Majesté du chef du Canada ou d'une province contre le débiteur pour les frais de réparation du fait ou dommage lié à l'environnement et touchant un de ses immeubles ou biens réels est garantie par une sûreté sur le bien en cause et sur ceux qui sont contigus à celui où le dommage est survenu et qui sont liés à l'activité ayant causé le fait ou le dommage; la sûreté peut être exécutée selon le droit du lieu où est situé le bien comme s'il s'agissait d'une hypothèque ou autre garantie sur celui-ci et, par dérogation aux autres dispo-

(*a*) is enforceable in accordance with the law of the jurisdiction in which the real property or immovable is located, in the same way as a mortgage, hypothec or other security on real property or immovables; and

(*b*) ranks above any other claim, right, charge or security against the property, despite any other provision of this Act or anything in any other federal or provincial law.

Claim for clean-up costs

(8) Despite subsection 121(1), a claim against a debtor in a bankruptcy or proposal for the costs of remedying any environmental condition or environmental damage affecting real property or an immovable of the debtor shall be a provable claim, whether the condition arose or the damage occurred before or after the date of the filing of the proposal or the date of the bankruptcy.

1992, c. 27, s. 9; 1997, c. 12, s. 15; 2004, c. 25, s. 16; 2005, c. 47, s. 17; 2007, c. 36, s. 9.

Effect of defect or irregularity in appointment

14.07 No defect or irregularity in the appointment of a trustee vitiates any act done by the trustee in good faith.

1992, c. 27, s. 9.

Corporations as Trustees

Majority of officers and directors must hold licences

14.08 A body corporate may hold a licence as a trustee only if a majority of its directors and a majority of its officers hold licences as trustees.

1992, c. 27, s. 9.

Acts of body corporate

14.09 A body corporate that holds a licence as a trustee may perform the duties and exercise the powers of a trustee only through a director or officer of the body corporate who holds a licence as a trustee.

1992, c. 27, s. 9.

Not carrying on business of trust company

14.1 Every body corporate that is incorporated by or under an Act of Parliament and that holds a licence as a trustee may carry on the business of a trustee anywhere in Canada and shall not, in respect of its operations as a trustee, be construed to be carrying on the business of a trust company.

1992, c. 27, s. 9.

Official Name

Official name in bankruptcy and proposal proceedings

15. The official name of a trustee acting in bankruptcy proceedings is "The Trustee of the Estate of (*insert name of the bankrupt*), a bank-

sitions de la présente loi et à toute règle de droit fédéral et provincial, a priorité sur tout autre droit, charge, sûreté ou réclamation visant le bien.

Précision

(8) Malgré le paragraphe 121(1), la réclamation pour les frais de réparation du fait ou dommage lié à l'environnement et touchant l'immeuble ou le bien réel du débiteur constitue une réclamation prouvable, que la date du fait ou dommage soit antérieure ou postérieure à celle de la faillite ou du dépôt de la proposition.

1992, ch. 27, art. 9; 1997, ch. 12, art. 15; 2004, ch. 25, art. 16; 2005, ch. 47, art. 17; 2007, ch. 36, art. 9.

Vice ou irrégularité dans la nomination

14.07 Aucune erreur ou irrégularité dans la nomination d'un syndic ne vicie un acte accompli de bonne foi par lui.

1992, ch. 27, art. 9.

Sociétés

Administrateurs titulaires de licences

14.08 Une personne morale ne peut être titulaire d'une licence de syndic que si la majorité de ses administrateurs et la majorité de ses dirigeants sont titulaires d'une telle licence.

1992, ch. 27, art. 9.

Actes des personnes morales

14.09 La personne morale titulaire d'une licence de syndic ne peut exercer ses fonctions à ce titre que par l'intermédiaire d'un de ses administrateurs ou dirigeants qui est lui-même titulaire d'une telle licence.

1992, ch. 27, art. 9.

Distinction entre les sociétés de fiducie

14.1 Toute personne morale de droit fédéral, titulaire d'une licence de syndic, peut exercer les fonctions de syndic sur tout le territoire du Canada; elle n'est pas, à cet égard, assimilée à une société de fiducie.

1992, ch. 27, art. 9.

Nom officiel

Nom officiel du syndic

15. Le nom officiel d'un syndic agissant en matière de faillite est « Le syndic de l'actif de (*insérer le nom du failli*), failli » et le nom offi-

Declaration — enforcement of a payment

(4) If there is a dispute as to whether a regulatory body is seeking to enforce its rights as a creditor, the court may, on application by the insolvent person and on notice to the regulatory body, make an order declaring both that the regulatory body is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed.

2007, c. 36, s. 37.

General Provisions

Precedence of bankruptcy orders and assignments

70. (1) Every bankruptcy order and every assignment made under this Act takes precedence over all judicial or other attachments, garnishments, certificates having the effect of judgments, judgments, certificates of judgment, legal hypothecs of judgment creditors, executions or other process against the property of a bankrupt, except those that have been completely executed by payment to the creditor or the creditor's representative, and except the rights of a secured creditor.

Costs

(2) Despite subsection (1), one bill of costs of a barrister or solicitor or, in the Province of Quebec, an advocate, including the executing officer's fees and land registration fees, shall be payable to the creditor who has first attached by way of garnishment or filed with the executing officer an attachment, execution or other process against the property of the bankrupt.

R.S., 1985, c. B-3, s. 70; 1992, c. 27, s. 37; 1997, c. 12, s. 66(F); 2004, c. 25, s. 44; 2005, c. 47, s. 63(E).

Vesting of property in trustee

71. On a bankruptcy order being made or an assignment being filed with an official receiver, a bankrupt ceases to have any capacity to dispose of or otherwise deal with their property, which shall, subject to this Act and to the rights of secured creditors, immediately pass to and vest in the trustee named in the bankruptcy order or assignment, and in any case of change of trustee the property shall pass from trustee to trustee without any assignment or transfer.

R.S., 1985, c. B-3, s. 71; 1997, c. 12, s. 67; 2004, c. 25, s. 44.

Application of other substantive law

72. (1) The provisions of this Act shall not be deemed to abrogate or supersede the substantive provisions of any other law or statute relating to property and civil rights that are not in conflict with this Act, and the trustee is entitled to avail himself of all rights and remedies

Déclaration : organisme agissant à titre de créancier

(4) En cas de différend sur la question de savoir si l'organisme administratif cherche à faire valoir ses droits à titre de créancier dans le cadre de la mesure prise, le tribunal peut déclarer par ordonnance, sur demande de la personne insolvable et sur préavis à l'organisme, que celui-ci agit effectivement à ce titre et que la mesure est suspendue.

2007, ch. 36, art. 37.

Dispositions générales

Priorité des ordonnances de faillite et cessions

70. (1) Toute ordonnance de faillite rendue et toute cession faite en conformité avec la présente loi ont priorité sur toutes saisies, saisies-arrêts, certificats ayant l'effet de jugements, jugements, certificats de jugements, hypothèques légales résultant d'un jugement, procédures d'exécution ou autres procédures contre les biens d'un failli, sauf ceux qui ont été complètement réglés par paiement au créancier ou à son représentant, et sauf les droits d'un créancier garanti.

Frais

(2) Malgré le paragraphe (1), un seul mémoire de frais émanant d'un avocat, y compris les honoraires de l'huissier-exécutant et les droits d'enregistrement fonciers, est à payer au créancier qui a le premier mis la saisie-arrêt ou déposé entre les mains de l'huissier-exécutant une saisie, une procédure d'exécution ou une autre procédure contre les biens du failli.

L.R. (1985), ch. B-3, art. 70; 1992, ch. 27, art. 37; 1997, ch. 12, art. 66(F); 2004, ch. 25, art. 44; 2005, ch. 47, art. 63(A).

Dévolution des biens au syndic

71. Lorsqu'une ordonnance de faillite est rendue, ou qu'une cession est produite auprès d'un séquestre officiel, le failli cesse d'être habile à céder ou autrement aliéner ses biens qui doivent, sous réserve des autres dispositions de la présente loi et des droits des créanciers garantis, immédiatement passer et être dévolus au syndic nommé dans l'ordonnance de faillite ou dans la cession, et advenant un changement de syndic, les biens passent de syndic à syndic sans cession ni transfert quelconque.

L.R. (1985), ch. B-3, art. 71; 1997, ch. 12, art. 67; 2004, ch. 25, art. 44.

Application d'autres lois positives

72. (1) La présente loi n'a pas pour effet d'abroger ou de remplacer les dispositions de droit substantif d'une autre loi ou règle de droit concernant la propriété et les droits civils, non incompatibles avec la présente loi, et le syndic est autorisé à se prévaloir de tous les droits et provided by that law or statute as supplementary to and in addition to the rights and remedies provided by this Act.

Operation of provincial law re documents executed under Act

(2) No bankruptcy order, assignment or other document made or executed under the authority of this Act shall, except as otherwise provided in this Act, be within the operation of any legislative enactment in force at any time in any province relating to deeds, mortgages, hypothecs, judgments, bills of sale, chattel mortgages, property or registration of documents affecting title to or liens or charges on real or personal property or immovables or movables.

R.S., 1985, c. B-3, s. 72; 1997, c. 12, s. 68(F); 2004, c. 25, s. 45.

Purchaser in good faith at sale protected

73. (1) An execution levied by seizure and sale of the property of a bankrupt is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the property in good faith under a sale by the executing officer acquires a good title to the property against the trustee.

Executing officer to deliver property of bankrupt to trustee

(2) If an assignment or a bankruptcy order has been made, the executing officer or other officer of any court or any other person having seized property of the bankrupt under execution or attachment or any other process shall, on receiving a copy of the assignment or the bankruptcy order certified by the trustee as a true copy, immediately deliver to the trustee all the property of the bankrupt in their hands.

In case of executing officer's sale

(3) If the executing officer has sold the property or any part of the property of a bankrupt, the executing officer shall deliver to the trustee the money so realized less the executing officer's fees and the costs referred to in subsection 70(2).

Effect of bankruptcy on seizure of property for rent or taxes

(4) Any property of a bankrupt under seizure for rent or taxes shall on production of a copy of the bankruptcy order or the assignment certified by the trustee as a true copy be delivered without delay to the trustee, but the costs of distress or, in the Province of Quebec, the costs of seizure are a security on the property ranking ahead of any other security on it, and, if the property or any part of it has been sold, the money realized from the sale less the costs

recours prévus par cette autre loi ou règle de droit, qui sont supplémentaires et additionnels aux droits et recours prévus par la présente loi.

Application de lois provinciales

(2) Nulle ordonnance de faillite, cession ou autre document fait ou souscrit sous l'autorité de la présente loi n'est, sauf disposition contraire de celle-ci, assujetti à l'application de toute loi en vigueur à toute époque dans une province relativement aux actes, hypothèques, jugements, actes de vente, biens ou enregistrements de pièces affectant le titre afférent aux biens, meubles ou immeubles, personnels ou réels, ou les privilèges ou charges sur ces biens.

L.R. (1985), ch. B-3, art. 72; 1997, ch. 12, art. 68(F); 2004, ch. 25, art. 45.

Protection de l'acheteur de bonne foi à la vente

73. (1) Une exécution exercée par saisie et vente des biens d'un failli n'est pas invalide pour le seul motif qu'elle est un acte de faillite, et une personne qui achète de bonne foi ces biens à une vente faite par l'huissier-exécutant acquiert un titre valable à ces biens contre le syndic.

Remise par l'huissier-exécutant des biens au syndic

(2) Lorsqu'il a été fait une cession ou qu'il a été rendu une ordonnance de faillite, l'huissier-exécutant ou tout autre fonctionnaire d'un tribunal ou toute autre personne ayant saisi des biens du failli en vertu d'une procédure d'exécution, d'une saisie-arrêt ou de toute autre procédure, sur réception d'une copie de la cession ou de l'ordonnance de faillite certifiée conforme par le syndic, livre immédiatement au syndic tous les biens du failli qu'il a en sa possession.

Dans le cas de vente par l'huissier-exécutant

(3) Lorsque l'huissier-exécutant a vendu les biens du failli ou une partie de ces biens, il remet au syndic les sommes d'argent qu'il a ainsi réalisées, moins ses honoraires et les frais mentionnés au paragraphe 70(2).

Effet d'une faillite sur la saisie de biens pour loyer ou taxes

(4) Sur production d'une copie de l'ordonnance de faillite ou de la cession, que le syndic a certifiée conforme, tout bien d'un failli saisi pour loyer ou pour taxes est remis sans délai au syndic; mais les frais de saisie constituent une sûreté de premier rang sur ces biens et, en cas de vente de tout ou partie des biens, le produit de celle-ci, moins les frais de la saisie et de la vente, est remis au syndic.

L.R. (1985), ch. B-3, art. 73; 1997, ch. 12, art. 69(F); 2004, ch. 25, art. 46.

special services for the estate may be allowed a special fee for those services, subject to approval of the court, which may vary that fee as it deems proper having regard to the nature of the services rendered in relation to the obligations of the inspector to the estate to act in good faith for the general interests of the administration of the estate.

R.S., 1985, c. B-3, s. 120; 1992, c. 27, s. 49; 2001, c. 4, s. 30; 2004, c. 25, s. 65(F); 2005, c. 47, s. 85.

Claims Provable

Claims provable

121. (1) All 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 this Act.

Contingent and unliquidated claims

(2) The determination whether a contingent or unliquidated claim is a provable claim and the valuation of such a claim shall be made in accordance with section 135.

Debts payable at a future time

(3) A creditor may prove a debt not payable at the date of the bankruptcy and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five per cent per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

Family support claims

(4) A claim in respect of a debt or liability referred to in paragraph 178(1)(*b*) or (*c*) payable under an order or agreement made before the date of the initial bankruptcy event in respect of the bankrupt and at a time when the spouse, former spouse, former common-law partner or child was living apart from the bankrupt, whether the order or agreement provides for periodic amounts or lump sum amounts, is a claim provable under this Act.

R.S., 1985, c. B-3, s. 121; 1992, c. 27, s. 50; 1997, c. 12, s. 87; 2000, c. 12, s. 14.

exécuter des services spéciaux pour le compte de l'actif peut avoir droit à des honoraires spéciaux pour ces services, sous réserve de l'approbation du tribunal qui peut modifier ces honoraires comme il le juge à propos eu égard à la nature des services rendus par rapport à l'obligation qu'a l'inspecteur d'agir de bonne foi en vue de l'intérêt général de l'administration de l'actif.

L.R. (1985), ch. B-3, art. 120; 1992, ch. 27, art. 49; 2001, ch. 4, art. 30; 2004, ch. 25, art. 65(F); 2005, ch. 47, art. 85.

Réclamations prouvables

Réclamations prouvables

121. (1) Toutes créances et tous engagements, présents ou futurs, auxquels le failli est assujetti à la date à laquelle il devient failli, ou auxquels il peut devenir assujetti avant sa libération, en raison d'une obligation contractée antérieurement à cette date, sont réputés des réclamations prouvables dans des procédures entamées en vertu de la présente loi.

Décision

(2) La question de savoir si une réclamation éventuelle ou non liquidée constitue une réclamation prouvable et, le cas échéant, son évaluation sont décidées en application de l'article 135.

Créances payables à une date future

(3) Un créancier peut établir la preuve d'une créance qui n'est pas échue à la date de la faillite, et recevoir des dividendes tout comme les autres créanciers, en en déduisant seulement un rabais d'intérêt au taux de cinq pour cent par an calculé à compter de la déclaration d'un dividende jusqu'à la date où la créance devait échoir selon les conditions auxquelles elle a été contractée.

Réclamations alimentaires

(4) Constitue une réclamation prouvable la réclamation pour une dette ou une obligation mentionnée aux alinéas 178(1)*b*) ou *c*) découlant d'une ordonnance judiciaire rendue ou d'une entente conclue avant l'ouverture de la faillite et à un moment où l'époux, l'ex-époux ou ancien conjoint de fait ou l'enfant ne vivait pas avec le failli, que l'ordonnance ou l'entente prévoie une somme forfaitaire ou payable périodiquement.

L.R. (1985), ch. B-3, art. 121; 1992, ch. 27, art. 50; 1997, ch. 12, art. 87; 2000, ch. 12, art. 14.

TAB B

PP. 3-7, 13-14

Department of Justice Canada   Ministère de la Justice Canada

Companies' Creditors Arrangement Act (R.S., 1985, c. C-36)
Act current to April 17th, 2009
Attention: See coming into force provision and notes, where applicable.
Table of Contents

Companies' Creditors Arrangement Act

C-36

An Act to facilitate compromises and arrangements between companies and their creditors

SHORT TITLE

Short title

1. This Act may be cited as the *Companies' Creditors Arrangement Act*.
R.S., c. C-25, s. 1.

INTERPRETATION

Definitions

2. In this Act,

"aircraft objects"
« *biens aéronautiques* »

"aircraft objects" has the same meaning as in subsection 2(1) of the *International Interests in Mobile Equipment (aircraft equipment) Act*;

"bond"
« *obligation* »

"bond" includes a debenture, debenture stock or other evidences of indebtedness;

"company"
« *compagnie* »

"company" means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province and any incorporated company having assets or doing business in Canada, wherever incorporated, except banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, railway or telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies;

"court"
« *tribunal* »

"court" means

(*a*) in Nova Scotia, British Columbia and Newfoundland, the Supreme Court,

(*a.1*) in Ontario, the Superior Court of Justice,

(*b*) in Quebec, the Superior Court,

(*c*) in New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench,

(*c.1*) in Prince Edward Island, the Trial Division of the Supreme Court, and

(*d*) in Yukon and the Northwest Territories, the Supreme Court, and in Nunavut, the Nunavut Court of Justice;

"debtor company"
« *compagnie débitrice* »

"debtor company" means any company that

(*a*) is bankrupt or insolvent,

(*b*) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,

(*c*) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or

(*d*) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent;

"eligible financial contract"
« *contrat financier admissible* »

"eligible financial contract" means an agreement of a prescribed kind;

"financial collateral"
« *garantie financière* »

"financial collateral" means any of the following that is subject to an interest, or in the Province of Quebec a right, that secures payment or performance of an obligation in respect of an eligible financial contract or that is subject to a title transfer credit support agreement:

(*a*) cash or cash equivalents, including negotiable instruments and demand deposits,

(*b*) securities, a securities account, a securities entitlement or a right to acquire securities, or

(*c*) a futures agreement or a futures account;

"net termination value"
« *valeurs nettes dues à la date de résiliation* »

"net termination value" means the net amount obtained after netting or setting off or compensating the mutual obligations between the parties to an eligible financial contract in accordance with its provisions;

"secured creditor"
« *créancier garanti* »

"secured creditor" means 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 a 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 purpose of voting at a creditors' meeting in respect of any of those bonds;

"shareholder"
« *actionnaire* »

"shareholder" means a shareholder or member of any company to which this Act applies;

"Superintendent of Financial Institutions"
« *surintendant des institutions financières* »

"Superintendent of Financial Institutions" means the Superintendent of Financial Institutions appointed under subsection 5(1) of the *Office of the Superintendent of Financial Institutions Act*;

"title transfer credit support agreement"
« *accord de transfert de titres pour obtention de crédit* »

"title transfer credit support agreement" means an agreement under which a debtor company has provided title to property for the purpose of securing the payment or performance of an obligation of the debtor company in respect of an eligible financial contract;

"unsecured creditor"
« *créancier chirographaire* »

"unsecured creditor" means 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.

R.S., 1985, c. C-36, s. 2; R.S., 1985, c. 27 (2nd Supp.), s. 10; 1990, c. 17, s. 4; 1992, c. 27, s. 90; 1993, c. 34, s. 52; 1996, c. 6, s. 167; 1997, c. 12, s. 120(E); 1998, c. 30, s. 14; 1999, c. 3, s. 22, c. 28, s. 154; 2001, c. 9, s. 575; 2002, c. 7, s. 133; 2004, c. 25, s. 193; 2005, c. 3, s. 15; 2007, c. 29, s. 104.

Application

3. (1) This Act applies in respect of a debtor company or affiliated debtor companies where the total of claims, within the meaning of section 12, against the debtor company or affiliated debtor companies exceeds five million dollars.

Affiliated companies

(2) For the purposes of this Act,

(*a*) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and

(*b*) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

Company controlled

(3) For the purposes of this Act, a company is controlled by a person or by two or more companies if

(*a*) securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those companies; and

(*b*) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company.

Subsidiary

(4) For the purposes of this Act, a company is a subsidiary of another company if

(*a*) it is controlled by

(i) that other company,

(ii) that other company and one or more companies each of which is controlled by that other company, or

(iii) two or more companies each of which is controlled by that other company; or

(*b*) it is a subsidiary of a company that is a subsidiary of that other company.
R.S., 1985, c. C-36, s. 3; 1997, c. 12, s. 121.

PART I

COMPROMISES AND ARRANGEMENTS

Compromise with unsecured creditors

4. Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.
R.S., c. C-25, s. 4.

Compromise with secured creditors

5. Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.
R.S., c. C-25, s. 5.

Claims against directors — compromise

5.1 (1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

Exception

(2) A provision for the compromise of claims against directors may not include claims that

(*a*) relate to contractual rights of one or more creditors; or

(*b*) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

Powers of court

(3) The court may declare that a claim against directors shall not be compromised if it is satisfied that the compromise would not be fair and reasonable in the circumstances.

Resignation or removal of directors

(4) Where all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the debtor company shall be deemed to be a director for the purposes of this section.

1997, c. 12, s. 122.

Compromises to be sanctioned by court

6. Where a majority in number representing two-thirds in value of the creditors, or class of creditors, as the case may be, present and voting either in person or by proxy at the meeting or meetings thereof respectively held pursuant to sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court, and if so sanctioned is binding

(*a*) on all the creditors or the class of creditors, as the case may be, and on any trustee for any such class of creditors, whether secured or unsecured, as the case may be, and on the company; and

(*b*) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act* or is in the course of being wound up under the *Winding-up and Restructuring Act*, on the trustee in bankruptcy or liquidator and contributories of the company.

R.S., 1985, c. C-36, s. 6; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 123; 2004, c. 25, s. 194.

Court may give directions

7. Where an alteration or a modification of any compromise or arrangement is proposed at any time after the court has directed a meeting or meetings to be summoned, the meeting or meetings may be adjourned on such term as to notice and otherwise as the court may direct, and those directions may be given after as well as before adjournment of any meeting or meetings, and the court may in its discretion direct that it is not necessary to adjourn any meeting or to convene any further meeting of any class of creditors or shareholders that in the opinion of the court is not adversely affected by the alteration or modification proposed, and any compromise or arrangement so altered or modified may be sanctioned by the court and have effect under section 6.

R.S., c. C-25, s. 7.

Scope of Act

8. This Act extends and does not limit the provisions of any instrument now or hereafter existing that governs the rights of creditors or any class of them and has full force and effect notwithstanding anything to the contrary contained in that instrument.
R.S., c. C-25, s. 8.

PART II

JURISDICTION OF COURTS

Jurisdiction of court to receive applications

9. (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

Single judge may exercise powers, subject to appeal

(2) The powers conferred by this Act on a court may, subject to appeal as provided for in this Act, be exercised by a single judge thereof, and those powers may be exercised in chambers during term or in vacation.
R.S., c. C-25, s. 9.

Form of applications

10. Applications under this Act shall be made by petition or by way of originating summons or notice of motion in accordance with the practice of the court in which the application is made.
R.S., c. C-25, s. 10.

Powers of court

11. (1) Notwithstanding anything in the *Bankruptcy and Insolvency Act* or the *Winding-up Act*, where an application is made under this Act in respect of a company, the court, on the application of any person interested in the matter, may, subject to this Act, on notice to any other person or without notice as it may see fit, make an order under this section.

Initial application

(2) An application made for the first time under this section in respect of a company, in this section referred to as an "initial application", shall be accompanied by a statement indicating the projected cash flow of the company and copies of all financial statements, audited or unaudited, prepared during the year prior to the application, or where no such statements were prepared in the prior year, a copy of the most recent such statement.

Initial application court orders

(3) A court may, on an initial application in respect of a company, make an order on such terms as it may impose, effective for such period as the court deems necessary not exceeding thirty days,

(*a*) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under an Act referred to in subsection (1);

(*b*) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(*c*) prohibiting, until otherwise ordered by the court, the commencement of or proceeding with any other action, suit or proceeding against the company.

Other than initial application court orders

(4) A court may, on an application in respect of a company other than an initial application, make an order on such terms as it may impose,

(*a*) staying, until otherwise ordered by the court, for such period as the court deems necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in subsection (1);

(*b*) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(*c*) prohibiting, until otherwise ordered by the court, the commencement of or proceeding with any other action, suit or proceeding against the company.

Notice of orders

(5) Except as otherwise ordered by the court, the monitor appointed under section 11.7 shall send a copy of any order made under subsection (3), within ten days after the order is made, to every known creditor who has a claim against the company of more than two hundred and fifty dollars.

Burden of proof on application

(6) The court shall not make an order under subsection (3) or (4) unless

(*a*) the applicant satisfies the court that circumstances exist that make such an order appropriate; and

(*b*) in the case of an order under subsection (4), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

R.S., 1985, c. C-36, s. 11; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 124.

Definitions

11.1 (1) [Repealed, 2007, c. 29, s. 106]

No stay, etc., in certain cases

(2) No order may be made under this Act staying or restraining the exercise of any right to terminate, amend or claim any accelerated payment under an eligible financial contract or preventing a member of the Canadian Payments Association established by the *Canadian Payments Act* from ceasing to act as a clearing agent or group clearer for a company in accordance with that Act and the by-laws and rules of that Association.

Permitted actions

(3) The following actions are permitted in respect of an eligible financial contract that is entered into before proceedings under this Act are commenced in respect of the company and is terminated on or after that day, but only in accordance with the provisions of that contract:

(*a*) the netting or setting off or compensation of obligations between the company and the other parties to the eligible financial contract; and

(*b*) any dealing with financial collateral including

(i) the sale or foreclosure or, in the Province of Quebec, the surrender of financial collateral, and

(ii) the setting off or compensation of financial collateral or the application of the proceeds or value of financial collateral.

Restriction

(4) No order may be made under this Act if the order would have the effect of staying or restraining the actions permitted under subsection (3).

Net termination values

(5) If net termination values determined in accordance with an eligible financial contract referred to in subsection (3) are owed by the company to another party to the eligible financial contract, that other party is deemed to be a creditor of the company with a claim against the company in respect of those net termination values.

Priority

(6) No order may be made under this Act if the order would have the effect of subordinating financial collateral.
1997, c. 12, s. 124; 2001, c. 9, s. 576; 2007, c. 29, s. 106.

No stay, etc., in certain cases

11.11 No order may be made under this Act staying or restraining

(*a*) the exercise by the Minister of Finance or the Superintendent of Financial Institutions of any power, duty or function assigned to them by the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act*;

(*b*) the exercise by the Governor in Council, the Minister of Finance or the Canada Deposit Insurance Corporation of any power, duty or function assigned to them by the *Canada Deposit Insurance Corporation Act*; or

(*c*) the exercise by the Attorney General of Canada of any power, assigned to him or her by the *Winding-up and Restructuring Act*.
2001, c. 9, s. 577.

No stay, etc. in certain cases

11.2 No order may be made under section 11 staying or restraining any action, suit or proceeding against a person, other than a debtor company in respect of which an application has been made under this Act, who is obligated under a letter of credit or guarantee in relation to the company.
1997, c. 12, s. 124.

Effect of order

11.3 No order made under section 11 shall have the effect of

(*a*) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made; or

(*b*) requiring the further advance of money or credit.
1997, c. 12, s. 124.

Limitation — aircraft objects

11.31 No order made under section 11 prevents a creditor who holds security on aircraft objects — or a lessor of aircraft objects or a conditional seller of aircraft objects — under an agreement with a debtor company in respect of which an application is made under this Act from taking possession of the equipment

(*a*) if, after the commencement of proceedings under this Act, the company defaults in protecting or maintaining the equipment in accordance with the agreement;

(*b*) sixty days after the commencement of proceedings under this Act unless, during that period, the company

(i) remedied the default of every other obligation under the agreement, other than a default constituted by the commencement of proceedings under this Act or the breach of a provision in the agreement relating to the company's financial condition,

(ii) agreed to perform the obligations under the agreement, other than an obligation not to become insolvent or an obligation relating to the company's financial condition, until proceedings under this Act end, and

(iii) agreed to perform all the obligations arising under the agreement after the proceedings under this Act end; or

(*c*) if, during the period that begins on the expiry of the sixty-day period and ends on the day on which proceedings under this Act end, the company defaults in performing an obligation under the agreement, other than an obligation not to become insolvent or an obligation relating to the company's financial condition.

2005, c. 3, s. 16.

Her Majesty affected

11.4 (1) An order made under section 11 may provide that

(*a*) Her Majesty in right of Canada may not exercise rights under subsection 224(1.2) of the *Income Tax Act* or any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, in respect of the company if the company is a tax debtor under that subsection or provision, for such period as the court considers appropriate but ending not later than

(i) the expiration of the order,

(ii) the refusal of a proposed compromise by the creditors or the court,

(iii) six months following the court sanction of a compromise or arrangement,

(iv) the default by the company on any term of a compromise or arrangement, or

(v) the performance of a compromise or arrangement in respect of the company; and

(*b*) Her Majesty in right of a province may not exercise rights under any provision of provincial legislation in respect of the company where the company is a debtor under that legislation and the provision has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the

Income Tax Act, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection,

for such period as the court considers appropriate but ending not later than the occurrence or time referred to in whichever of subparagraphs (*a*)(i) to (v) may apply.

When order ceases to be in effect

(2) An order referred to in subsection (1) ceases to be in effect if

(*a*) the company defaults on payment of any amount that becomes due to Her Majesty after the order is made and could be subject to a demand under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(iii) under any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection; or

(*b*) any other creditor is or becomes entitled to realize a security on any property that could be claimed by Her Majesty in exercising rights under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

Operation of similar legislation

(3) An order made under section 11, other than an order referred to in subsection (1) of this section, does not affect the operation of

(*a*) subsections 224(1.2) and (1.3) of the *Income Tax Act*,

(*b*) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(*c*) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection,

and for the purpose of paragraph (*c*), the provision of provincial legislation is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as subsection 224(1.2) of the *Income Tax Act* in respect of a sum referred to in subparagraph (*c*)(i), or as subsection 23(2) of the *Canada Pension Plan* in respect of a sum referred to in subparagraph (*c*)(ii), and in respect of any related interest, penalties or other amounts.

1997, c. 12, s. 124; 2000, c. 30, s. 156; 2001, c. 34, s. 33(E).

Stay of proceedings — directors

11.5 (1) An order made under section 11 may provide that no person may commence or continue any action against a director of the debtor company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company where directors are under any law liable in their capacity as directors for the payment of such obligations, until a compromise or arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

Exception

(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.

Resignation or removal of directors

(3) Where all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the company shall be deemed to be a director for the purposes of this section.

1997, c. 12, s. 124.

Bankruptcy and Insolvency Act matters

11.6 Notwithstanding the *Bankruptcy and Insolvency Act*,

(*a*) proceedings commenced under Part III of the *Bankruptcy and Insolvency Act* may be taken up and continued under this Act only if a proposal within the meaning of the *Bankruptcy and Insolvency Act* has not been filed under that Part; and

(*b*) an application under this Act by a bankrupt may only be made with the consent of inspectors referred to in section 116 of the *Bankruptcy and Insolvency Act* but no application may be made under this Act by a bankrupt whose bankruptcy has resulted from

(i) the operation of subsection 50.4(8) of the *Bankruptcy and Insolvency Act*, or

(ii) the refusal or deemed refusal by the creditors or the court, or the annulment, of a proposal under the *Bankruptcy and Insolvency Act*.

1997, c. 12, s. 124.

Court to appoint monitor

11.7 (1) When an order is made in respect of a company by the court under section 11, the court shall at the same time appoint a person, in this section and in section 11.8 referred to as "the monitor", to monitor the business and financial affairs of the company while the order remains in effect.

Auditor may be monitor

(2) Except as may be otherwise directed by the court, the auditor of the company may be appointed as the monitor.

Functions of monitor

(3) The monitor shall

(*a*) for the purposes of monitoring the company's business and financial affairs, have access to and examine the company's property, including the premises, books, records, data, including data in electronic form, and other financial documents of the company to the extent necessary to adequately assess the company's business and financial affairs;

(*b*) file a report with the court on the state of the company's business and financial affairs, containing prescribed information,

(i) forthwith after ascertaining any material adverse change in the company's projected cash-flow or financial circumstances,

(ii) at least seven days before any meeting of creditors under section 4 or 5, or

(iii) at such other times as the court may order;

(*c*) advise the creditors of the filing of the report referred to in paragraph (*b*) in any notice of a meeting of creditors referred to in section 4 or 5; and

(*d*) carry out such other functions in relation to the company as the court may direct.

Monitor not liable

(4) Where the monitor acts in good faith and takes reasonable care in preparing the report referred to in paragraph (3)(*b*), the monitor is not liable for loss or damage to any person

resulting from that person's reliance on the report.

Assistance to be provided

(5) The debtor company shall

(*a*) provide such assistance to the monitor as is necessary to enable the monitor to adequately carry out the monitor's functions; and

(*b*) perform such duties set out in section 158 of the *Bankruptcy and Insolvency Act* as are appropriate and applicable in the circumstances.

1997, c. 12, s. 124.

Non-liability in respect of certain matters

11.8 (1) Notwithstanding anything in any federal or provincial law, where a monitor carries on in that position the business of a debtor company or continues the employment of the company's employees, the monitor is not by reason of that fact personally liable in respect of any claim against the company or related to a requirement imposed on the company to pay an amount where the claim arose before or upon the monitor's appointment.

Status of claim ranking

(2) A claim referred to in subsection (1) shall not rank as costs of administration.

Liability in respect of environmental matters

(3) Notwithstanding anything in any federal or provincial law, a monitor is not personally liable in that position for any environmental condition that arose or environmental damage that occurred

(*a*) before the monitor's appointment; or

(*b*) after the monitor's appointment unless it is established that the condition arose or the damage occurred as a result of the monitor's gross negligence or wilful misconduct.

Reports, etc., still required

(4) Nothing in subsection (3) exempts a monitor from any duty to report or make disclosure imposed by a law referred to in that subsection.

Non-liability re certain orders

(5) Notwithstanding anything in any federal or provincial law but subject to subsection (3), where an order is made which has the effect of requiring a monitor to remedy any environmental condition or environmental damage affecting property involved in a proceeding under this Act, the monitor is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,

(*a*) if, within such time as is specified in the order, within ten days after the order is made if no time is so specified, within ten days after the appointment of the monitor, if the order is in effect when the monitor is appointed or during the period of the stay referred to in paragraph (*b*), the monitor

(i) complies with the order, or

(ii) on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;

(*b*) during the period of a stay of the order granted, on application made within the time specified in the order referred to in paragraph (*a*) or within ten days after the order is made or within ten days after the appointment of the monitor, if the order is in effect when the monitor is appointed, by

(i) the court or body having jurisdiction under the law pursuant to which the order was made to enable the monitor to contest the order, or

(ii) the court having jurisdiction under this Act for the purposes of assessing the economic viability of complying with the order; or

(*c*) if the monitor had, before the order was made, abandoned or renounced any interest in any real property affected by the condition or damage.

Stay may be granted

(6) The court may grant a stay of the order referred to in subsection (5) on such notice and for such period as the court deems necessary for the purpose of enabling the monitor to assess the economic viability of complying with the order.

Costs for remedying not costs of administration

(7) Where the monitor has abandoned or renounced any interest in real property affected by the environmental condition or environmental damage, claims for costs of remedying the condition or damage shall not rank as costs of administration.

Priority of claims

(8) Any claim by Her Majesty in right of Canada or a province against a debtor company in respect of which proceedings have been commenced under this Act for costs of remedying any environmental condition or environmental damage affecting real property of the company is secured by a charge on the real property and on any other real property of the company that is contiguous thereto and that is related to the activity that caused the environmental condition or environmental damage, and the charge

(*a*) is enforceable in accordance with the law of the jurisdiction in which the real property is located, in the same way as a mortgage, hypothec or other security on real property; and

(*b*) ranks above any other claim, right or charge against the property, notwithstanding any other provision of this Act or anything in any other federal or provincial law.

Claim for clean-up costs

(9) A claim against a debtor company for costs of remedying any environmental condition or environmental damage affecting real property of the company shall be a claim under this Act, whether the condition arose or the damage occurred before or after the date on which proceedings under this Act were commenced.
1997, c. 12, s. 124.

Definition of "claim"

12. (1) For the purposes of this Act, "claim" means any indebtedness, liability or obligation of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*.

Determination of amount of claim

(2) For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor shall be determined as follows:

(*a*) the amount of an unsecured claim shall be the amount

(i) in the case of a company in the course of being wound up under the *Winding-up and Restructuring Act*, proof of which has been made in accordance with that Act,

(ii) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, proof of which has been made in accordance with that Act, or

(iii) in the case of any other company, proof of which might be made under the *Bankruptcy and Insolvency Act*, but if the amount so provable is not admitted by the company, the amount shall be determined by the court on summary application by the company or by the creditor; and

(*b*) the amount of a secured claim shall be the amount, proof of which might be made in respect thereof under the *Bankruptcy and Insolvency Act* if the claim were unsecured, but the amount if not admitted by the company shall, in the case of a company subject to pending proceedings under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, be established by proof in the same manner as an unsecured claim under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, as the case may be, and in the case of any other company the amount shall be determined by the court on summary application by the company or the creditor.

Admission of claims

(3) Notwithstanding subsection (2), the company may admit the amount of a claim for voting purposes under reserve of the right to contest liability on the claim for other purposes, and nothing in this Act, the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act* prevents a secured creditor from voting at a meeting of secured creditors or any class of them in respect of the total amount of a claim as admitted.

R.S., 1985, c. C-36, s. 12; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 2004, c. 25, s. 195.

Leave to appeal

13. Except in Yukon, any person dissatisfied with an order or a decision made under this Act may appeal from the order or decision on obtaining leave of the judge appealed from or of the court or a judge of the court to which the appeal lies and on such terms as to security and in other respects as the judge or court directs.

R.S., 1985, c. C-36, s. 13; 2002, c. 7, s. 134.

Court of appeal

14. (1) An appeal under section 13 lies to the highest court of final resort in or for the province in which the proceeding originated.

Practice

(2) All appeals under section 13 shall be regulated as far as possible according to the practice in other cases of the court appealed to, but no appeal shall be entertained unless, within twenty-one days after the rendering of the order or decision being appealed, or within such further time as the court appealed from, or, in Yukon, a judge of the Supreme Court of Canada, allows, the appellant has taken proceedings therein to perfect his or her appeal, and within that time he or she has made a deposit or given sufficient security according to the practice of the court appealed

to that he or she will duly prosecute the appeal and pay such costs as may be awarded to the respondent and comply with any terms as to security or otherwise imposed by the judge giving leave to appeal.
R.S., 1985, c. C-36, s. 14; 2002, c. 7, s. 135.

Appeals

15. (1) An appeal lies to the Supreme Court of Canada on leave therefor being granted by that Court from the highest court of final resort in or for the province or territory in which the proceeding originated.

Jurisdiction of Supreme Court of Canada

(2) The Supreme Court of Canada shall have jurisdiction to hear and to decide according to its ordinary procedure any appeal under subsection (1) and to award costs.

Stay of proceedings

(3) No appeal to the Supreme Court of Canada shall operate as a stay of proceedings unless and to the extent ordered by that Court.

Security for costs

(4) The appellant in an appeal under subsection (1) shall not be required to provide any security for costs, but, unless he provides security for costs in an amount to be fixed by the Supreme Court of Canada, he shall not be awarded costs in the event of his success on the appeal.

Decision final

(5) The decision of the Supreme Court of Canada on any appeal under subsection (1) is final and conclusive.
R.S., c. C-25, s. 15; R.S., c. 44(1st Supp.), s. 10.

Order of court of one province

16. Every order made by the court in any province in the exercise of jurisdiction conferred by this Act in respect of any compromise or arrangement shall have full force and effect in all the other provinces and shall be enforced in the court of each of the other provinces in the same manner in all respects as if the order had been made by the court enforcing it.
R.S., c. C-25, s. 16.

Courts shall aid each other on request

17. All courts that have jurisdiction under this Act and the officers of those courts shall act in aid of and be auxiliary to each other in all matters provided for in this Act, and an order of a court seeking aid with a request to another court shall be deemed sufficient to enable the latter court to exercise in regard to the matters directed by the order such jurisdiction as either the court that made the request or the court to which the request is made could exercise in regard to similar matters within their respective jurisdictions.
R.S., c. C-25, s. 17.

Governor in Council may make general rules

18. (1) The Governor in Council may make, alter or revoke, and may delegate to the judges of the courts exercising jurisdiction under this Act the power to make, alter or revoke, general rules for carrying into effect the objects of this Act.

Limitation

(2) The rules referred to in subsection (1) shall not extend the jurisdiction of the court.

General rules to be laid before Parliament

(3) All general rules as are from time to time made by the Governor in Council shall be laid before Parliament within three weeks after they are made, or, if Parliament is not then sitting, within three weeks after the beginning of the next session.

Judicial notice

(4) All rules referred to in subsection (1) shall be judicially noticed and shall have effect as if enacted by this Act.
R.S., c. C-25, s. 18.

Law of set-off to apply

18.1 The law of set-off applies to all claims made against a debtor company and to all actions instituted by it for the recovery of debts due to the company in the same manner and to the same extent as if the company were plaintiff or defendant, as the case may be.
1997, c. 12, s. 125.

Certain Crown claims

18.2 (1) If an order contains a provision authorized by subsection 11.4(1), unless Her Majesty consents, no compromise or arrangement shall be sanctioned by the court that does not provide for the payment in full to Her Majesty in right of Canada or a province, within six months after court sanction of the compromise or arrangement, of all amounts that were outstanding at the time of the application for an order under section 11 and that are of a kind that could be subject to a demand under

(*a*) subsection 224(1.2) of the *Income Tax Act*;

(*b*) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts; or

(*c*) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

Default of remittance to Crown

(2) Where an order contains a provision authorized by subsection 11.4(1), no compromise or arrangement shall be sanctioned by the court if, at the time the court hears the application for

sanction, Her Majesty in right of Canada or a province satisfies the court that the company is in default on any remittance of an amount referred to in subsection (1) that became due after the time of the application for an order under section 11.
1997, c. 12, s. 125; 2000, c. 30, s. 157.

Deemed trusts

18.3 (1) Subject to subsection (2), notwithstanding any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a debtor company shall not be regarded as held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

Exceptions

(2) Subsection (1) does not apply in respect of amounts deemed to be held in trust under subsection 227(4) or (4.1) of the *Income Tax Act*, subsection 23(3) or (4) of the *Canada Pension Plan* or subsection 86(2) or (2.1) of the *Employment Insurance Act* (each of which is in this subsection referred to as a "federal provision") nor in respect of amounts deemed to be held in trust under any law of a province that creates a deemed trust the sole purpose of which is to ensure remittance to Her Majesty in right of the province of amounts deducted or withheld under a law of the province where

(*a*) that law of the province imposes a tax similar in nature to the tax imposed under the *Income Tax Act* and the amounts deducted or withheld under that law of the province are of the same nature as the amounts referred to in subsection 227(4) or (4.1) of the *Income Tax Act*, or

(*b*) the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan*, that law of the province establishes a "provincial pension plan" as defined in that subsection and the amounts deducted or withheld under that law of the province are of the same nature as amounts referred to in subsection 23(3) or (4) of the *Canada Pension Plan*,

and for the purpose of this subsection, any provision of a law of a province that creates a deemed trust is, notwithstanding any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as the corresponding federal provision.
1997, c. 12, s. 125; 1998, c. 19, s. 260.

Status of Crown claims

18.4 (1) In relation to a proceeding under this Act, all claims, including secured claims, of Her Majesty in right of Canada or a province or any body under an enactment respecting workers' compensation, in this section and in section 18.5 called a "workers' compensation body", rank as unsecured claims.

Exceptions

(2) Subsection (1) does not apply

(*a*) to claims that are secured by a security or privilege of a kind that can be obtained by persons other than Her Majesty or a workers' compensation body

(i) pursuant to any law, or

(ii) pursuant to provisions of federal or provincial legislation, where those provisions do not have as their sole or principal purpose the establishment of a means of securing claims of

Her Majesty or a workers' compensation body; and

(*b*) to the extent provided in subsection 18.5(2), to claims that are secured by a security referred to in subsection 18.5(1), if the security is registered in accordance with subsection 18.5(1).

Operation of similar legislation

(3) Subsection (1) does not affect the operation of

(*a*) subsections 224(1.2) and (1.3) of the *Income Tax Act*,

(*b*) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(*c*) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection,

and for the purpose of paragraph (*c*), the provision of provincial legislation is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as subsection 224(1.2) of the *Income Tax Act* in respect of a sum referred to in subparagraph (*c*)(i), or as subsection 23(2) of the *Canada Pension Plan* in respect of a sum referred to in subparagraph (*c*)(ii), and in respect of any related interest, penalties or other amounts.

1997, c. 12, s. 125; 2000, c. 30, s. 158.

Statutory Crown securities

18.5 (1) In relation to a proceeding under this Act in respect of a debtor company, a security provided for in federal or provincial legislation for the sole or principal purpose of securing a claim of Her Majesty in right of Canada or a province or a workers' compensation body is valid in relation to claims against the company only if the security is registered before the date of the initial application for an order under section 11 pursuant to any system of registration of securities that is available not only to Her Majesty in right of Canada or a province or a workers' compensation body, but also to any other creditor who holds a security, and that is open to the public for information or the making of searches.

Effect of security

(2) A security referred to in subsection (1) that is registered in accordance with that subsection

(*a*) is subordinate to securities in respect of which all steps necessary to make them effective against other creditors were taken before that registration; and

(*b*) is valid only in respect of amounts owing to Her Majesty or a workers' compensation body at the time of that registration, plus any interest subsequently accruing on those amounts.
1997, c. 12, s. 125.

INTERNATIONAL INSOLVENCIES

Definitions

18.6 (1) In this section,

"foreign proceeding"
« *procédures intentées à l'étranger* »

"foreign proceeding" means a judicial or administrative proceeding commenced outside Canada in respect of a debtor under a law relating to bankruptcy or insolvency and dealing with the collective interests of creditors generally;

"foreign representative"
« *représentant étranger* »

"foreign representative" means a person, other than a debtor, holding office under the law of a jurisdiction outside Canada who, irrespective of the person's designation, is assigned, under the laws of the jurisdiction outside Canada, functions in connection with a foreign proceeding that are similar to those performed by a trustee in bankruptcy, liquidator or other administrator appointed by the court.

Powers of court

(2) The court may, in respect of a debtor company, make such orders and grant such relief as it considers appropriate to facilitate, approve or implement arrangements that will result in a co-ordination of proceedings under this Act with any foreign proceeding.

Terms and conditions of orders

(3) An order of the court under this section may be made on such terms and conditions as the court considers appropriate in the circumstances.

Court not prevented from applying certain rules

(4) Nothing in this section prevents the court, on the application of a foreign representative or any other interested person, from applying such legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives as are not inconsistent with the provisions of this Act.

Court not compelled to give effect to certain orders

(5) Nothing in this section requires the court to make any order that is not in compliance with the laws of Canada or to enforce any order made by a foreign court.

Court may seek assistance from foreign tribunal

(6) The court may seek the aid and assistance of a court, tribunal or other authority in a foreign proceeding by order or written request or otherwise as the court considers appropriate.

Foreign representative status

(7) An application to the court by a foreign representative under this section does not submit

the foreign representative to the jurisdiction of the court for any other purpose except with regard to the costs of the proceedings, but the court may make any order under this section conditional on the compliance by the foreign representative with any other order of the court.

Claims in foreign currency

(8) Where a compromise or arrangement is proposed in respect of a debtor company, a claim for a debt that is payable in a currency other than Canadian currency shall be converted to Canadian currency as of the date of the first application made in respect of the company under section 10 unless otherwise provided in the proposed compromise or arrangement.
1997, c. 12, s. 125.

PART III

GENERAL

Certain sections of *Winding-up and Restructuring Act* do not apply

19. Sections 65 and 66 of the *Winding-up and Restructuring Act* do not apply to any compromise or arrangement to which this Act applies.
R.S., 1985, c. C-36, s. 19; 1996, c. 6, s. 167.

Act to be applied conjointly with other Acts

20. The provisions of this Act may be applied together with the provisions of any Act of Parliament or of the legislature of any province, that authorizes or makes provision for the sanction of compromises or arrangements between a company and its shareholders or any class of them.
R.S., c. C-25, s. 20.

Act binding on Her Majesty

21. This Act is binding on Her Majesty in right of Canada or a province.
1997, c. 12, s. 126.

Review by Parliament

22. (1) This Act shall, on the expiration of five years after the coming into force of this section, stand referred to such committee of the Senate, of the House of Commons or of both Houses of Parliament as may be designated or established to review the administration and operation of this Act.

Report

(2) The committee shall, within one year after beginning the review or within such further time as the Senate, the House of Commons or both Houses of Parliament, as the case may be, may authorize, submit a report on the review to that House or both Houses, including a statement of any changes to this Act that the committee would recommend.
1997, c. 12, s. 126.

Last updated: 2009-12-14

TAB C

PP. 1, 4-5, 13-14, 20-21, 29

CHAPTER C-36

An Act to facilitate compromises and arrangements between companies and their creditors

SHORT TITLE

Short title

1. This Act may be cited as the *Companies' Creditors Arrangement Act.*

R.S., c. C-25, s. 1.

INTERPRETATION

Definitions

2. (1) In this Act,

"aircraft objects" « *biens aéronautiques* »

"aircraft objects" has the same meaning as in subsection 2(1) of the *International Interests in Mobile Equipment (aircraft equipment) Act*;

"bargaining agent" « *agent négociateur* »

"bargaining agent" means any trade union that has entered into a collective agreement on behalf of the employees of a company;

"bond" « *obligation* »

"bond" includes a debenture, debenture stock or other evidences of indebtedness;

"cash-flow statement" « *état de l'évolution de l'encaisse* »

"cash-flow statement", in respect of a company, means the statement referred to in paragraph 10(2)(*a*) indicating the company's projected cash flow;

"claim" « *réclamation* »

"claim" means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the *Bankruptcy and Insolvency Act*;

"collective agreement" « *convention collective* »

"collective agreement", in relation to a debtor company, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the debtor company and a bargaining agent;

"company" « *compagnie* »

"company" means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the

CHAPITRE C-36

Loi facilitant les transactions et arrangements entre les compagnies et leurs créanciers

TITRE ABRÉGÉ

Titre abrégé

1. *Loi sur les arrangements avec les créanciers des compagnies.*

S.R., ch. C-25, art. 1.

DÉFINITIONS ET APPLICATION

Définitions

2. (1) Les définitions qui suivent s'appliquent à la présente loi.

« accord de transfert de titres pour obtention de crédit » *"title transfer credit support agreement"*

« accord de transfert de titres pour obtention de crédit » Accord aux termes duquel une compagnie débitrice transfère la propriété d'un bien en vue de garantir le paiement d'une somme ou l'exécution d'une obligation relativement à un contrat financier admissible.

« actionnaire » *"shareholder"*

« actionnaire » S'agissant d'une compagnie ou d'une fiducie de revenu assujetties à la présente loi, est assimilée à l'actionnaire la personne ayant un intérêt dans cette compagnie ou détenant des parts de cette fiducie.

« administrateur » *"director"*

« administrateur » S'agissant d'une compagnie autre qu'une fiducie de revenu, toute personne exerçant les fonctions d'administrateur, indépendamment de son titre, et, s'agissant d'une fiducie de revenu, toute personne exerçant les fonctions de fiduciaire, indépendamment de son titre.

« agent négociateur » *"bargaining agent"*

« agent négociateur » Syndicat ayant conclu une convention collective pour le compte des employés d'une compagnie.

« biens aéronautiques » *"aircraft objects"*

« biens aéronautiques » S'entend au sens du paragraphe 2(1) de la *Loi sur les garanties internationales portant sur des matériels d'équipement mobiles (matériels d'équipement aéronautiques).*

meaning of section 2 of the *Bank Act*, railway or telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies;

"court" « *tribunal* »

"court" means

(*a*) in Nova Scotia, British Columbia and Newfoundland, the Supreme Court,

(*a.1*) in Ontario, the Superior Court of Justice,

(*b*) in Quebec, the Superior Court,

(*c*) in New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench,

(*c.1*) in Prince Edward Island, the Trial Division of the Supreme Court, and

(*d*) in Yukon and the Northwest Territories, the Supreme Court, and in Nunavut, the Nunavut Court of Justice;

"debtor company" « *compagnie débitrice* »

"debtor company" means any company that

(*a*) is bankrupt or insolvent,

(*b*) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,

(*c*) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or

(*d*) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent;

"director" « *administrateur* »

"director" means, in the case of a company other than an income trust, a person occupying the position of director by whatever name called and, in the case of an income trust, a person occupying the position of trustee by whatever named called;

"eligible financial contract" « *contrat financier admissible* »

"eligible financial contract" means an agreement of a prescribed kind;

« compagnie » *"company"*

« compagnie » Toute personne morale constituée par une loi fédérale ou provinciale ou sous son régime et toute personne morale qui possède un actif ou exerce des activités au Canada, quel que soit l'endroit où elle a été constituée, ainsi que toute fiducie de revenu. La présente définition exclut les banques, les banques étrangères autorisées, au sens de l'article 2 de la *Loi sur les banques*, les compagnies de chemin de fer ou de télégraphe, les compagnies d'assurances et les sociétés auxquelles s'applique la *Loi sur les sociétés de fiducie et de prêt.*

« compagnie débitrice » *"debtor company"*

« compagnie débitrice » Toute compagnie qui, selon le cas :

a) est en faillite ou est insolvable;

b) a commis un acte de faillite au sens de la *Loi sur la faillite et l'insolvabilité* ou est réputée insolvable au sens de la *Loi sur les liquidations et les restructurations*, que des procédures relatives à cette compagnie aient été intentées ou non sous le régime de l'une ou l'autre de ces lois;

c) a fait une cession autorisée ou à l'encontre de laquelle une ordonnance de faillite a été rendue en vertu de la *Loi sur la faillite et l'insolvabilité*;

d) est en voie de liquidation aux termes de la *Loi sur les liquidations et les restructurations* parce que la compagnie est insolvable.

« contrat financier admissible » *"eligible financial contract"*

« contrat financier admissible » Contrat d'une catégorie réglementaire.

« contrôleur » *"monitor"*

« contrôleur » S'agissant d'une compagnie, la personne nommée en application de l'article 11.7 pour agir à titre de contrôleur des affaires financières et autres de celle-ci.

« convention collective » *"collective agreement"*

« convention collective » S'entend au sens donné à ce terme par les règles de droit applicables aux négociations collectives entre la compagnie débitrice et l'agent négociateur.

« créancier chirographaire » *"unsecured creditor"*

« créancier chirographaire » Tout créancier d'une compagnie qui n'est pas un créancier garanti, qu'il réside ou soit domicilié au Canada ou à l'étranger. Un fiduciaire pour les détenteurs d'obligations non garanties, lesquelles sont émises en vertu d'un acte de fiducie ou autre acte fonctionnant en faveur du fiduciaire, est réputé un créancier chirographaire pour toutes "equity claim" « réclamation relative à des capitaux propres »

"equity claim" means a claim that is in respect of an equity interest, including a claim for, among others,

(*a*) a dividend or similar payment,

(*b*) a return of capital,

(*c*) a redemption or retraction obligation,

(*d*) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or

(*e*) contribution or indemnity in respect of a claim referred to in any of paragraphs (*a*) to (*d*);

"equity interest" « intérêt relatif à des capitaux propres »

"equity interest" means

(*a*) in the case of a company other than an income trust, a share in the company — or a warrant or option or another right to acquire a share in the company — other than one that is derived from a convertible debt, and

(*b*) in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt;

"financial collateral" « garantie financière »

"financial collateral" means any of the following that is subject to an interest, or in the Province of Quebec a right, that secures payment or performance of an obligation in respect of an eligible financial contract or that is subject to a title transfer credit support agreement:

(*a*) cash or cash equivalents, including negotiable instruments and demand deposits,

(*b*) securities, a securities account, a securities entitlement or a right to acquire securities, or

(*c*) a futures agreement or a futures account;

"income trust" « fiducie de revenu »

"income trust" means a trust that has assets in Canada if

(*a*) its units are listed on a prescribed stock exchange on the day on which proceedings commence under this Act, or

(*b*) the majority of its units are held by a trust whose units are listed on a prescribed stock exchange on the day on which proceedings commence under this Act;

les fins de la présente loi sauf la votation à une assemblée des créanciers relativement à ces obligations.

« créancier garanti » "secured creditor"

« créancier garanti » Détenteur d'hypothèque, de gage, charge, nantissement ou privilège sur ou contre l'ensemble ou une partie des biens d'une compagnie débitrice, ou tout transport, cession ou transfert de la totalité ou d'une partie de ces biens, à titre de garantie d'une dette de la compagnie débitrice, ou un détenteur de quelque obligation d'une compagnie débitrice garantie par hypothèque, gage, charge, nantissement ou privilège sur ou contre l'ensemble ou une partie des biens de la compagnie débitrice, ou un transport, une cession ou un transfert de tout ou partie de ces biens, ou une fiducie à leur égard, que ce détenteur ou bénéficiaire réside ou soit domicilié au Canada ou à l'étranger. Un fiduciaire en vertu de tout acte de fiducie ou autre instrument garantissant ces obligations est réputé un créancier garanti pour toutes les fins de la présente loi sauf la votation à une assemblée de créanciers relativement à ces obligations.

« demande initiale » "initial application"

« demande initiale » La demande faite pour la première fois en application de la présente loi relativement à une compagnie.

« état de l'évolution de l'encaisse » "cash-flow statement"

« état de l'évolution de l'encaisse » Relativement à une compagnie, l'état visé à l'alinéa 10(2)*a*) portant, projections à l'appui, sur l'évolution de l'encaisse de celle-ci.

« fiducie de revenu » "income trust"

« fiducie de revenu » Fiducie qui possède un actif au Canada et dont les parts sont inscrites à une bourse de valeurs mobilières visée par règlement à la date à laquelle des procédures sont intentées sous le régime de la présente loi, ou sont détenues en majorité par une fiducie dont les parts sont inscrites à une telle bourse à cette date.

« garantie financière » "financial collateral"

« garantie financière » S'il est assujetti soit à un intérêt ou, dans la province de Québec, à un droit garantissant le paiement d'une somme ou l'exécution d'une obligation relativement à un contrat financier admissible, soit à un accord de transfert de titres pour obtention de crédit, l'un ou l'autre des éléments suivants :

a) les sommes en espèces et les équivalents de trésorerie — notamment les effets négociables et dépôts à vue;

"initial application" « demande initiale »

"initial application" means the first application made under this Act in respect of a company;

"monitor" « contrôleur »

"monitor", in respect of a company, means the person appointed under section 11.7 to monitor the business and financial affairs of the company;

"net termination value" « valeurs nettes dues à la date de résiliation »

"net termination value" means the net amount obtained after netting or setting off or compensating the mutual obligations between the parties to an eligible financial contract in accordance with its provisions;

"prescribed" Version anglaise seulement

"prescribed" means prescribed by regulation;

"secured creditor" « créancier garanti »

"secured creditor" means 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 a 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 purpose of voting at a creditors' meeting in respect of any of those bonds;

"shareholder" « actionnaire »

"shareholder" includes a member of a company — and, in the case of an income trust, a holder of a unit in an income trust — to which this Act applies;

"Superintendent of Bankruptcy" « surintendant des faillites »

"Superintendent of Bankruptcy" means the Superintendent of Bankruptcy appointed under subsection 5(1) of the *Bankruptcy and Insolvency Act*;

"Superintendent of Financial Institutions" « surintendant des institutions financières »

"Superintendent of Financial Institutions" means the Superintendent of Financial Institutions appointed under subsection 5(1) of the *Office of the Superintendent of Financial Institutions Act*;

b) les titres, comptes de titres, droits intermédiés et droits d'acquérir des titres;

c) les contrats à terme ou comptes de contrats à terme.

« intérêt relatif à des capitaux propres » "equity interest"

« intérêt relatif à des capitaux propres »

a) S'agissant d'une compagnie autre qu'une fiducie de revenu, action de celle-ci ou bon de souscription, option ou autre droit permettant d'acquérir une telle action et ne provenant pas de la conversion d'une dette convertible;

b) s'agissant d'une fiducie de revenu, part de celle-ci ou bon de souscription, option ou autre droit permettant d'acquérir une telle part et ne provenant pas de la conversion d'une dette convertible.

« obligation » "bond"

« obligation » Sont assimilés aux obligations les débentures, stock-obligations et autres titres de créance.

« réclamation » "claim"

« réclamation » S'entend de toute dette, de tout engagement ou de toute obligation de quelque nature que ce soit, qui constituerait une réclamation prouvable au sens de l'article 2 de la *Loi sur la faillite et l'insolvabilité*.

« réclamation relative à des capitaux propres » "equity claim"

« réclamation relative à des capitaux propres » Réclamation portant sur un intérêt relatif à des capitaux propres et visant notamment :

a) un dividende ou un paiement similaire;

b) un remboursement de capital;

c) tout droit de rachat d'actions au gré de l'actionnaire ou de remboursement anticipé d'actions au gré de l'émetteur;

d) des pertes pécuniaires associées à la propriété, à l'achat ou à la vente d'un intérêt relatif à des capitaux propres ou à l'annulation de cet achat ou de cette vente;

e) une contribution ou une indemnité relative à toute réclamation visée à l'un des alinéas *a*) à *d*).

« surintendant des faillites » "Superintendent of Bankruptcy"

« surintendant des faillites » Le surintendant des faillites nommé au titre du paragraphe 5(1) de la *Loi sur la faillite et l'insolvabilité*.

« surintendant des institutions financières » "Superintendent of Financial Institutions"

« surintendant des institutions financières » Le surintendant des institutions financières nommé en application du paragraphe 5(1) de la *Loi sur le Bureau du surintendant des institutions financières*.

"title transfer credit support agreement" « *accord de transfert de titres pour obtention de crédit* »

"title transfer credit support agreement" means an agreement under which a debtor company has provided title to property for the purpose of securing the payment or performance of an obligation of the debtor company in respect of an eligible financial contract;

"unsecured creditor" « *créancier chirographaire* »

"unsecured creditor" means 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.

« tribunal » "*court*"

« tribunal »

a) Dans les provinces de la Nouvelle-Écosse, de la Colombie-Britannique et de Terre-Neuve, la Cour suprême;

a.1) dans la province d'Ontario, la Cour supérieure de justice;

b) dans la province de Québec, la Cour supérieure;

c) dans les provinces du Nouveau-Brunswick, du Manitoba, de la Saskatchewan et d'Alberta, la Cour du Banc de la Reine;

c.1) dans la province de l'Île-du-Prince-Édouard, la Section de première instance de la Cour suprême;

d) au Yukon et dans les Territoires du Nord-Ouest, la Cour suprême et, au Nunavut, la Cour de justice du Nunavut.

« valeurs nettes dues à la date de résiliation » "*net termination value*"

« valeurs nettes dues à la date de résiliation » La somme nette obtenue après compensation des obligations mutuelles des parties à un contrat financier admissible effectuée conformément à ce contrat.

Meaning of "related" and "dealing at arm's length"

(2) For the purpose of this Act, section 4 of the *Bankruptcy and Insolvency Act* applies for the purpose of determining whether a person is related to or dealing at arm's length with a debtor company.

R.S., 1985, c. C-36, s. 2; R.S., 1985, c. 27 (2nd Supp.), s. 10; 1990, c. 17, s. 4; 1992, c. 27, s. 90; 1993, c. 34, s. 52; 1996, c. 6, s. 167; 1997, c. 12, s. 120(E); 1998, c. 30, s. 14; 1999, c. 3, s. 22, c. 28, s. 154; 2001, c. 9, s. 575; 2002, c. 7, s. 133; 2004, c. 25, s. 193; 2005, c. 3, s. 15, c. 47, s. 124; 2007, c. 29, s. 104, c. 36, ss. 61, 105.

Définition de « personnes liées »

(2) Pour l'application de la présente loi, l'article 4 de la *Loi sur la faillite et l'insolvabilité* s'applique pour établir si une personne est liée à une compagnie débitrice ou agit sans lien de dépendance avec une telle compagnie.

L.R. (1985), ch. C-36, art. 2; L.R. (1985), ch. 27 (2e suppl.), art. 10; 1990, ch. 17, art. 4; 1992, ch. 27, art. 90; 1993, ch. 34, art. 52; 1996, ch. 6, art. 167; 1997, ch. 12, art. 120(A); 1998, ch. 30, art. 14; 1999, ch. 3, art. 22, ch. 28, art. 154; 2001, ch. 9, art. 575; 2002, ch. 7, art. 133; 2004, ch. 25, art. 193; 2005, ch. 3, art. 15, ch. 47, art. 124; 2007, ch. 29, art. 104, ch. 36, art. 61 et 105.

Application

3. (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than $5,000,000 or any other amount that is prescribed.

Application

3. (1) La présente loi ne s'applique à une compagnie débitrice ou aux compagnies débitrices qui appartiennent au même groupe qu'elle que si le montant des réclamations contre elle ou les compagnies appartenant au même groupe, établi conformément à l'article 20, est supérieur à cinq millions de dollars ou à toute autre somme prévue par les règlements.

Affiliated companies

(2) For the purposes of this Act,

(*a*) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and

Application

(2) Pour l'application de la présente loi :

a) appartiennent au même groupe deux compagnies dont l'une est la filiale de l'autre ou qui sont sous le contrôle de la même personne;

(*b*) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

Company controlled

(3) For the purposes of this Act, a company is controlled by a person or by two or more companies if

(*a*) securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those companies; and

(*b*) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company.

Subsidiary

(4) For the purposes of this Act, a company is a subsidiary of another company if

(*a*) it is controlled by

(i) that other company,

(ii) that other company and one or more companies each of which is controlled by that other company, or

(iii) two or more companies each of which is controlled by that other company; or

(*b*) it is a subsidiary of a company that is a subsidiary of that other company.

R.S., 1985, c. C-36, s. 3; 1997, c. 12, s. 121; 2005, c. 47, s. 125.

b) sont réputées appartenir au même groupe deux compagnies dont chacune appartient au groupe d'une même compagnie.

Application

(3) Pour l'application de la présente loi, ont le contrôle d'une compagnie la personne ou les compagnies :

a) qui détiennent — ou en sont bénéficiaires — , autrement qu'à titre de garantie seulement, des valeurs mobilières conférant plus de cinquante pour cent du maximum possible des voix à l'élection des administrateurs de la compagnie;

b) dont lesdites valeurs mobilières confèrent un droit de vote dont l'exercice permet d'élire la majorité des administrateurs de la compagnie.

Application

(4) Pour l'application de la présente loi, une compagnie est la filiale d'une autre compagnie dans chacun des cas suivants :

a) elle est contrôlée :

(i) soit par l'autre compagnie,

(ii) soit par l'autre compagnie et une ou plusieurs compagnies elles-mêmes contrôlées par cette autre compagnie,

(iii) soit par des compagnies elles-mêmes contrôlées par l'autre compagnie;

b) elle est la filiale d'une filiale de l'autre compagnie.

L.R. (1985), ch. C-36, art. 3; 1997, ch. 12, art. 121; 2005, ch. 47, art. 125.

PART I

COMPROMISES AND ARRANGEMENTS

Compromise with unsecured creditors

4. Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

R.S., c. C-25, s. 4.

Compromise with secured creditors

5. Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court

PARTIE I

TRANSACTIONS ET ARRANGEMENTS

Transaction avec les créanciers chirographaires

4. Lorsqu'une transaction ou un arrangement est proposé entre une compagnie débitrice et ses créanciers chirographaires ou toute catégorie de ces derniers, le tribunal peut, à la requête sommaire de la compagnie, d'un de ces créanciers ou du syndic en matière de faillite ou liquidateur de la compagnie, ordonner que soit convoquée, de la manière qu'il prescrit, une assemblée de ces créanciers ou catégorie de créanciers, et, si le tribunal en décide ainsi, des actionnaires de la compagnie.

S.R., ch. C-25, art. 4.

Transaction avec les créanciers garantis

5. Lorsqu'une transaction ou un arrangement est proposé entre une compagnie débitrice et ses créanciers garantis ou toute catégorie de

(*b*) the court is satisfied that the company can and will make the payments as required under paragraph (*a*).

Non-application of subsection (6)

(7) Despite subsection (6), the court may sanction a compromise or arrangement that does not allow for the payment of the amounts referred to in that subsection if it is satisfied that the relevant parties have entered into an agreement, approved by the relevant pension regulator, respecting the payment of those amounts.

Payment — equity claims

(8) No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

R.S., 1985, c. C-36, s. 6; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 123; 2004, c. 25, s. 194; 2005, c. 47, s. 126, 2007, c. 36, s. 106.

Court may give directions

7. Where an alteration or a modification of any compromise or arrangement is proposed at any time after the court has directed a meeting or meetings to be summoned, the meeting or meetings may be adjourned on such term as to notice and otherwise as the court may direct, and those directions may be given after as well as before adjournment of any meeting or meetings, and the court may in its discretion direct that it is not necessary to adjourn any meeting or to convene any further meeting of any class of creditors or shareholders that in the opinion of the court is not adversely affected by the alteration or modification proposed, and any compromise or arrangement so altered or modified may be sanctioned by the court and have effect under section 6.

R.S., c. C-25, s. 7.

Scope of Act

8. This Act extends and does not limit the provisions of any instrument now or hereafter existing that governs the rights of creditors or any class of them and has full force and effect notwithstanding anything to the contrary contained in that instrument.

R.S., c. C-25, s. 8.

Non-application du paragraphe (6)

(7) Par dérogation au paragraphe (6), le tribunal peut homologuer la transaction ou l'arrangement qui ne prévoit pas le versement des sommes mentionnées à ce paragraphe s'il est convaincu que les parties en cause ont conclu un accord sur les sommes à verser et que l'autorité administrative responsable du régime de pension a consenti à l'accord.

Paiement d'une réclamation relative à des capitaux propres

(8) Le tribunal ne peut homologuer la transaction ou l'arrangement qui prévoit le paiement d'une réclamation relative à des capitaux propres que si, selon les termes de celle-ci, le paiement intégral de toutes les autres réclamations sera effectué avant le paiement de la réclamation relative à des capitaux propres.

L.R. (1985), ch. C-36, art. 6; 1992, ch. 27, art. 90; 1996, ch. 6, art. 167; 1997, ch. 12, art. 123; 2004, ch. 25, art. 194; 2005, ch. 47, art. 126, 2007, ch. 36, art. 106.

Le tribunal peut donner des instructions

7. Si une modification d'une transaction ou d'un arrangement est proposée après que le tribunal a ordonné qu'une ou plusieurs assemblées soient convoquées, cette ou ces assemblées peuvent être ajournées aux conditions que peut prescrire le tribunal quant à l'avis et autrement, et ces instructions peuvent être données tant après qu'avant l'ajournement de toute ou toutes assemblées, et le tribunal peut, à sa discrétion, prescrire qu'il ne sera pas nécessaire d'ajourner quelque assemblée ou de convoquer une nouvelle assemblée de toute catégorie de créanciers ou actionnaires qui, selon l'opinion du tribunal, n'est pas défavorablement atteinte par la modification proposée, et une transaction ou un arrangement ainsi modifié peut être homologué par le tribunal et être exécutoire en vertu de l'article 6.

S.R., ch. C-25, art. 7.

Champ d'application de la loi

8. La présente loi n'a pas pour effet de limiter mais d'étendre les stipulations de tout instrument actuellement ou désormais existant relativement aux droits de créanciers ou de toute catégorie de ces derniers, et elle est pleinement exécutoire et effective nonobstant toute stipulation contraire de cet instrument.

S.R., ch. C-25, art. 8.

PART II

JURISDICTION OF COURTS

Jurisdiction of court to receive applications

9. (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

Single judge may exercise powers, subject to appeal

(2) The powers conferred by this Act on a court may, subject to appeal as provided for in this Act, be exercised by a single judge thereof, and those powers may be exercised in chambers during term or in vacation.

R.S., c. C-25, s. 9.

Form of applications

10. (1) Applications under this Act shall be made by petition or by way of originating summons or notice of motion in accordance with the practice of the court in which the application is made.

Documents that must accompany initial application

(2) An initial application must be accompanied by

(*a*) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;

(*b*) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and

(*c*) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

Publication ban

(3) The court may make an order prohibiting the release to the public of any cash-flow statement, or any part of a cash-flow statement, if it is satisfied that the release would unduly prejudice the debtor company and the making of the order would not unduly prejudice the company's creditors, but the court may, in the order, direct that the cash-flow statement or any part of it be made available to any person specified in the order on any terms or conditions that the court considers appropriate.

R.S., 1985, c. C-36, s. 10; 2005, c. 47, s. 127.

PARTIE II

JURIDICTION DES TRIBUNAUX

Le tribunal a juridiction pour recevoir des demandes

9. (1) Toute demande prévue par la présente loi peut être faite au tribunal ayant juridiction dans la province où est situé le siège social ou le principal bureau d'affaires de la compagnie au Canada, ou, si la compagnie n'a pas de bureau d'affaires au Canada, dans la province où est situé quelque actif de la compagnie.

Un seul juge peut exercer les pouvoirs, sous réserve d'appel

(2) Les pouvoirs conférés au tribunal par la présente loi peuvent être exercés par un seul de ses juges, sous réserve de l'appel prévu par la présente loi. Ces pouvoirs peuvent être exercés en chambre, soit durant une session du tribunal, soit pendant les vacances judiciaires.

S.R., ch. C-25, art. 9.

Forme des demandes

10. (1) Les demandes prévues par la présente loi peuvent être formulées par requête ou par voie d'assignation introductive d'instance ou d'avis de motion conformément à la pratique du tribunal auquel la demande est présentée.

Documents accompagnant la demande initiale

(2) La demande initiale doit être accompagnée :

a) d'un état portant, projections à l'appui, sur l'évolution hebdomadaire de l'encaisse de la compagnie débitrice;

b) d'un rapport contenant les observations réglementaires de la compagnie débitrice relativement à l'établissement de cet état;

c) d'une copie des états financiers, vérifiés ou non, établis au cours de l'année précédant la demande ou, à défaut, d'une copie des états financiers les plus récents.

Interdiction de mettre l'état à la disposition du public

(3) Le tribunal peut, par ordonnance, interdire la communication au public de tout ou partie de l'état de l'évolution de l'encaisse de la compagnie débitrice s'il est convaincu que sa communication causerait un préjudice indu à celle-ci et que sa non-communication ne causerait pas de préjudice indu à ses créanciers. Il peut toutefois préciser dans l'ordonnance que tout ou partie de cet état peut être communiqué, aux conditions qu'il estime indiquées, à la personne qu'il nomme.

L.R. (1985), ch. C-36, art. 10; 2005, ch. 47, art. 127.

General power of court

11. Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

R.S., 1985, c. C-36, s. 11; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 124; 2005, c. 47, s. 128.

Pouvoir général du tribunal

11. Malgré toute disposition de la *Loi sur la faillite et l'insolvabilité* ou de la *Loi sur les liquidations et les restructurations*, le tribunal peut, dans le cas de toute demande sous le régime de la présente loi à l'égard d'une compagnie débitrice, rendre, sur demande d'un intéressé, mais sous réserve des restrictions prévues par la présente loi et avec ou sans avis, toute ordonnance qu'il estime indiquée.

L.R. (1985), ch. C-36, art. 11; 1992, ch. 27, art. 90; 1996, ch. 6, art. 167; 1997, ch. 12, art. 124; 2005, ch. 47, art. 128.

Rights of suppliers

11.01 No order made under section 11 or 11.02 has the effect of

(*a*) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made; or

(*b*) requiring the further advance of money or credit.

2005, c. 47, s. 128.

Droits des fournisseurs

11.01 L'ordonnance prévue aux articles 11 ou 11.02 ne peut avoir pour effet :

a) d'empêcher une personne d'exiger que soient effectués sans délai les paiements relatifs à la fourniture de marchandises ou de services, à l'utilisation de biens loués ou faisant l'objet d'une licence ou à la fourniture de toute autre contrepartie de valeur qui ont lieu après l'ordonnance;

b) d'exiger le versement de nouvelles avances de fonds ou de nouveaux crédits.

2005, ch. 47, art. 128.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

(*a*) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(*b*) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(*c*) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Suspension : demande initiale

11.02 (1) Dans le cas d'une demande initiale visant une compagnie débitrice, le tribunal peut, par ordonnance, aux conditions qu'il peut imposer et pour la période maximale de trente jours qu'il estime nécessaire :

a) suspendre, jusqu'à nouvel ordre, toute procédure qui est ou pourrait être intentée contre la compagnie sous le régime de la *Loi sur la faillite et l'insolvabilité* ou de la *Loi sur les liquidations et les restructurations*;

b) surseoir, jusqu'à nouvel ordre, à la continuation de toute action, poursuite ou autre procédure contre la compagnie;

c) interdire, jusqu'à nouvel ordre, l'introduction de toute action, poursuite ou autre procédure contre la compagnie.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(*a*) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(*a*);

Suspension : demandes autres qu'initiales

(2) Dans le cas d'une demande, autre qu'une demande initiale, visant une compagnie débitrice, le tribunal peut, par ordonnance, aux conditions qu'il peut imposer et pour la période qu'il estime nécessaire :

a) suspendre, jusqu'à nouvel ordre, toute procédure qui est ou pourrait être intentée contre la compagnie sous le régime des lois mentionnées à l'alinéa (1)*a*);

(*b*) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(*c*) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(*a*) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(*b*) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

2005, c. 47, s. 128, 2007, c. 36, s. 62(F).

Stays — directors

11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

Exception

(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.

Persons deemed to be directors

(3) If all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the company is deemed to be a director for the purposes of this section.

2005, c. 47, s. 128.

Persons obligated under letter of credit or guarantee

11.04 No order made under section 11.02 has affect on any action, suit or proceeding against a person, other than the company in respect of whom the order is made, who is obli-

b) surseoir, jusqu'à nouvel ordre, à la continuation de toute action, poursuite ou autre procédure contre la compagnie;

c) interdire, jusqu'à nouvel ordre, l'introduction de toute action, poursuite ou autre procédure contre la compagnie.

Preuve

(3) Le tribunal ne rend l'ordonnance que si :

a) le demandeur le convainc que la mesure est opportune;

b) dans le cas de l'ordonnance visée au paragraphe (2), le demandeur le convainc en outre qu'il a agi et continue d'agir de bonne foi et avec la diligence voulue.

Restriction

(4) L'ordonnance qui prévoit l'une des mesures visées aux paragraphes (1) ou (2) ne peut être rendue qu'en vertu du présent article.

2005, ch. 47, art. 128, 2007, ch. 36, art. 62(F).

Suspension — administrateurs

11.03 (1) L'ordonnance prévue à l'article 11.02 peut interdire l'introduction ou la continuation de toute action contre les administrateurs de la compagnie relativement aux réclamations qui sont antérieures aux procédures intentées sous le régime de la présente loi et visent des obligations de la compagnie dont ils peuvent être, ès qualités, responsables en droit, tant que la transaction ou l'arrangement, le cas échéant, n'a pas été homologué par le tribunal ou rejeté par celui-ci ou les créanciers.

Exclusion

(2) La suspension ne s'applique toutefois pas aux actions contre les administrateurs pour les garanties qu'ils ont données relativement aux obligations de la compagnie ni aux mesures de la nature d'une injonction les visant au sujet de celle-ci.

Présomption : administrateurs

(3) Si tous les administrateurs démissionnent ou sont destitués par les actionnaires sans être remplacés, quiconque dirige ou supervise les activités commerciales et les affaires internes de la compagnie est réputé un administrateur pour l'application du présent article.

2005, ch. 47, art. 128.

Suspension — lettres de crédit ou garanties

11.04 L'ordonnance prévue à l'article 11.02 est sans effet sur toute action, poursuite ou autre procédure contre la personne — autre que la compagnie visée par l'ordonnance — qui a des nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

somme, ainsi que des intérêts, pénalités et autres charges afférents, laquelle :

(A) soit a été retenue par une personne sur un paiement effectué à une autre personne, ou déduite d'un tel paiement, et se rapporte à un impôt semblable, de par sa nature, à l'impôt sur le revenu auquel les particuliers sont assujettis en vertu de la *Loi de l'impôt sur le revenu*,

(B) soit est de même nature qu'une cotisation prévue par le *Régime de pensions du Canada*, si la province est une province instituant un régime général de pensions au sens du paragraphe 3(1) de cette loi et si la loi provinciale institue un régime provincial de pensions au sens de ce paragraphe.

Operation of similar legislation

(3) An order made under section 11.02, other than the portions of that order that affect the exercise of rights of Her Majesty referred to in paragraph (1)(*a*) or (*b*), does not affect the operation of

(*a*) subsections 224(1.2) and (1.3) of the *Income Tax Act*,

(*b*) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(*c*) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in

Effet

(3) L'ordonnance prévue à l'article 11.02, à l'exception des passages de celle-ci qui suspendent l'exercice des droits de Sa Majesté visés aux alinéas (1)*a*) ou *b*), n'a pas pour effet de porter atteinte à l'application des dispositions suivantes :

a) les paragraphes 224(1.2) et (1.3) de la *Loi de l'impôt sur le revenu*;

b) toute disposition du *Régime de pensions du Canada* ou de la *Loi sur l'assurance-emploi* qui renvoie au paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* et qui prévoit la perception d'une cotisation, au sens du *Régime de pensions du Canada*, ou d'une cotisation ouvrière ou d'une cotisation patronale, au sens de la *Loi sur l'assurance-emploi*, ainsi que des intérêts, pénalités et autres charges afférents;

c) toute disposition législative provinciale dont l'objet est semblable à celui du paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*, ou qui renvoie à ce paragraphe, et qui prévoit la perception d'une somme, ainsi que des intérêts, pénalités et autres charges afférents, laquelle :

(i) soit a été retenue par une personne sur un paiement effectué à une autre personne, ou déduite d'un tel paiement, et se rapporte à un impôt semblable, de par sa nature, à l'impôt sur le revenu auquel les particuliers sont assujettis en vertu de la *Loi de l'impôt sur le revenu*, subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection,

and for the purpose of paragraph (*c*), the provision of provincial legislation is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as subsection 224(1.2) of the *Income Tax Act* in respect of a sum referred to in subparagraph (*c*)(i), or as subsection 23(2) of the *Canada Pension Plan* in respect of a sum referred to in subparagraph (*c*)(ii), and in respect of any related interest, penalties or other amounts.

2005, c. 47, s. 128.

(ii) soit est de même nature qu'une cotisation prévue par le *Régime de pensions du Canada*, si la province est une province instituant un régime général de pensions au sens du paragraphe 3(1) de cette loi et si la loi provinciale institue un régime provincial de pensions au sens de ce paragraphe.

Pour l'application de l'alinéa *c*), la disposition législative provinciale en question est réputée avoir, à l'encontre de tout créancier et malgré tout texte législatif fédéral ou provincial et toute autre règle de droit, la même portée et le même effet que le paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* quant à la somme visée au sous-alinéa *c*)(i), ou que le paragraphe 23(2) du *Régime de pensions du Canada* quant à la somme visée au sous-alinéa *c*)(ii), et quant aux intérêts, pénalités et autres charges afférents, quelle que soit la garantie dont bénéficie le créancier.

2005, ch. 47, art. 128.

Meaning of "regulatory body"

11.1 (1) In this section, "regulatory body" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.

Regulatory bodies — order under section 11.02

(2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body's investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

Exception

(3) On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court's opinion

(*a*) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and

Définition de « organisme administratif »

11.1 (1) Au présent article, « organisme administratif » s'entend de toute personne ou de tout organisme chargé de l'application d'une loi fédérale ou provinciale; y est assimilé toute personne ou tout organisme désigné à ce titre par règlement.

Organisme administratif — ordonnance rendue en vertu de l'article 11.02

(2) Sous réserve du paragraphe (3), l'ordonnance prévue à l'article 11.02 ne porte aucunement atteinte aux mesures — action, poursuite ou autre procédure — prises à l'égard de la compagnie débitrice par ou devant un organisme administratif, ni aux investigations auxquelles il procède à son sujet. Elles n'ont d'effet que sur l'exécution d'un paiement ordonné par lui ou le tribunal.

Exception

(3) Le tribunal peut par ordonnance, sur demande de la compagnie et sur préavis à l'organisme administratif et à toute personne qui sera vraisemblablement touchée par l'ordonnance, déclarer que le paragraphe (2) ne s'applique pas à l'une ou plusieurs des mesures prises par ou devant celui-ci, s'il est convaincu que, à la fois :

a) il ne pourrait être fait de transaction ou d'arrangement viable à l'égard de la compagnie si ce paragraphe s'appliquait;

(*b*) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

Declaration — enforcement of a payment

(4) If there is a dispute as to whether a regulatory body is seeking to enforce its rights as a creditor, the court may, on application by the company and on notice to the regulatory body, make an order declaring both that the regulatory body is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed.

1997, c. 12, s. 124; 2001, c. 9, s. 576; 2005, c. 47, s. 128; 2007, c. 29, s. 106, c. 36, s. 65.

11.11 [Repealed, 2005, c. 47, s. 128]

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(*a*) the period during which the company is expected to be subject to proceedings under this Act;

(*b*) how the company's business and financial affairs are to be managed during the proceedings;

(*c*) whether the company's management has the confidence of its major creditors;

b) l'ordonnance demandée au titre de l'article 11.02 n'est pas contraire à l'intérêt public.

Déclaration : organisme agissant à titre de créancier

(4) En cas de différend sur la question de savoir si l'organisme administratif cherche à faire valoir ses droits à titre de créancier dans le cadre de la mesure prise, le tribunal peut déclarer, par ordonnance, sur demande de la compagnie et sur préavis à l'organisme, que celui-ci agit effectivement à ce titre et que la mesure est suspendue.

1997, ch. 12, art. 124; 2001, ch. 9, art. 576; 2005, ch. 47, art. 128; 2007, ch. 29, art. 106, ch. 36, art. 65.

11.11 [Abrogé, 2005, ch. 47, art. 128]

Financement temporaire

11.2 (1) Sur demande de la compagnie débitrice, le tribunal peut par ordonnance, sur préavis de la demande aux créanciers garantis qui seront vraisemblablement touchés par la charge ou sûreté, déclarer que tout ou partie des biens de la compagnie sont grevés d'une charge ou sûreté — d'un montant qu'il estime indiqué — en faveur de la personne nommée dans l'ordonnance qui accepte de prêter à la compagnie la somme qu'il approuve compte tenu de l'état de l'évolution de l'encaisse et des besoins de celle-ci. La charge ou sûreté ne peut garantir qu'une obligation postérieure au prononcé de l'ordonnance.

Priorité — créanciers garantis

(2) Le tribunal peut préciser, dans l'ordonnance, que la charge ou sûreté a priorité sur toute réclamation des créanciers garantis de la compagnie.

Priorité — autres ordonnances

(3) Il peut également y préciser que la charge ou sûreté n'a priorité sur toute autre charge ou sûreté grevant les biens de la compagnie au titre d'une ordonnance déjà rendue en vertu du paragraphe (1) que sur consentement de la personne en faveur de qui cette ordonnance a été rendue.

Facteurs à prendre en considération

(4) Pour décider s'il rend l'ordonnance, le tribunal prend en considération, entre autres, les facteurs suivants :

a) la durée prévue des procédures intentées à l'égard de la compagnie sous le régime de la présente loi;

b) la façon dont les affaires financières et autres de la compagnie seront gérées au cours de ces procédures;

(*d*) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(*e*) the nature and value of the company's property;

(*f*) whether any creditor would be materially prejudiced as a result of the security or charge; and

(*g*) the monitor's report referred to in paragraph 23(1)(*b*), if any.

1997, c. 12, s. 124; 2005, c. 47, s. 128; 2007, c. 36, s. 65.

c) la question de savoir si ses dirigeants ont la confiance de ses créanciers les plus importants;

d) la question de savoir si le prêt favorisera la conclusion d'une transaction ou d'un arrangement viable à l'égard de la compagnie;

e) la nature et la valeur des biens de la compagnie;

f) la question de savoir si la charge ou sûreté causera un préjudice sérieux à l'un ou l'autre des créanciers de la compagnie;

g) le rapport du contrôleur visé à l'alinéa 23(1)*b*).

1997, ch. 12, art. 124; 2005, ch. 47, art. 128; 2007, ch. 36, art. 65.

Assignment of agreements

11.3 (1) On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

Cessions

11.3 (1) Sur demande de la compagnie débitrice et sur préavis à toutes les parties au contrat et au contrôleur, le tribunal peut, par ordonnance, céder à toute personne qu'il précise et qui y a consenti les droits et obligations de la compagnie découlant du contrat.

Exceptions

(2) Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

(*a*) an agreement entered into on or after the day on which proceedings commence under this Act;

(*b*) an eligible financial contract; or

(*c*) a collective agreement.

Exceptions

(2) Le paragraphe (1) ne s'applique pas aux droits et obligations qui, de par leur nature, ne peuvent être cédés ou qui découlent soit d'un contrat conclu à la date à laquelle une procédure a été intentée sous le régime de la présente loi ou par la suite, soit d'un contrat financier admissible, soit d'une convention collective.

Factors to be considered

(3) In deciding whether to make the order, the court is to consider, among other things,

(*a*) whether the monitor approved the proposed assignment;

(*b*) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and

(*c*) whether it would be appropriate to assign the rights and obligations to that person.

Facteurs à prendre en considération

(3) Pour décider s'il rend l'ordonnance, le tribunal prend en considération, entre autres, les facteurs suivants :

a) l'acquiescement du contrôleur au projet de cession, le cas échéant;

b) la capacité de la personne à qui les droits et obligations seraient cédés d'exécuter les obligations;

c) l'opportunité de lui céder les droits et obligations.

Restriction

(4) The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the company's insolvency, the commencement of proceedings under this Act or the company's failure to perform a

Restriction

(4) Il ne peut rendre l'ordonnance que s'il est convaincu qu'il sera remédié, au plus tard à la date qu'il fixe, à tous les manquements d'ordre pécuniaire relatifs au contrat, autres que ceux découlant du seul fait que la compagnie est insolvable, est visée par une procédure intentée sous le régime de la présente loi ou ne

Fixing deadlines

12. The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

R.S., 1985, c. C-36, s. 12; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 2004, c. 25, s. 195; 2005, c. 47, s. 130; 2007, c. 36, s. 68.

Leave to appeal

13. Except in Yukon, any person dissatisfied with an order or a decision made under this Act may appeal from the order or decision on obtaining leave of the judge appealed from or of the court or a judge of the court to which the appeal lies and on such terms as to security and in other respects as the judge or court directs.

R.S., 1985, c. C-36, s. 13; 2002, c. 7, s. 134.

Court of appeal

14. (1) An appeal under section 13 lies to the highest court of final resort in or for the province in which the proceeding originated.

Practice

(2) All appeals under section 13 shall be regulated as far as possible according to the practice in other cases of the court appealed to, but no appeal shall be entertained unless, within twenty-one days after the rendering of the order or decision being appealed, or within such further time as the court appealed from, or, in Yukon, a judge of the Supreme Court of Canada, allows, the appellant has taken proceedings therein to perfect his or her appeal, and within that time he or she has made a deposit or given sufficient security according to the practice of the court appealed to that he or she will duly prosecute the appeal and pay such costs as may be awarded to the respondent and comply with any terms as to security or otherwise imposed by the judge giving leave to appeal.

R.S., 1985, c. C-36, s. 14; 2002, c. 7, s. 135.

Appeals

15. (1) An appeal lies to the Supreme Court of Canada on leave therefor being granted by that Court from the highest court of final resort in or for the province or territory in which the proceeding originated.

Jurisdiction of Supreme Court of Canada

(2) The Supreme Court of Canada shall have jurisdiction to hear and to decide according to its ordinary procedure any appeal under subsection (1) and to award costs.

Échéances

12. Le tribunal peut fixer des échéances aux fins de votation et aux fins de distribution aux termes d'une transaction ou d'un arrangement.

L.R. (1985), ch. C-36, art. 12; 1992, ch. 27, art. 90; 1996, ch. 6, art. 167; 2004, ch. 25, art. 195; 2005, ch. 47, art. 130; 2007, ch. 36, art. 68.

Permission d'en appeler

13. Sauf au Yukon, toute personne mécontente d'une ordonnance ou décision rendue en application de la présente loi peut en appeler après avoir obtenu la permission du juge dont la décision fait l'objet d'un appel ou après avoir obtenu la permission du tribunal ou d'un juge du tribunal auquel l'appel est porté et aux conditions que prescrit ce juge ou tribunal concernant le cautionnement et à d'autres égards.

L.R. (1985), ch. C-36, art. 13; 2002, ch. 7, art. 134.

Cour d'appel

14. (1) Cet appel doit être porté au tribunal de dernier ressort de la province où la procédure a pris naissance.

Pratique

(2) Tous ces appels sont régis autant que possible par la pratique suivie dans d'autres causes devant le tribunal saisi de l'appel; toutefois, aucun appel n'est recevable à moins que, dans le délai de vingt et un jours après qu'a été rendue l'ordonnance ou la décision faisant l'objet de l'appel, ou dans le délai additionnel que peut accorder le tribunal dont il est interjeté appel ou, au Yukon, un juge de la Cour suprême du Canada, l'appelant n'y ait pris des procédures pour parfaire son appel, et à moins que, dans ce délai, il n'ait fait un dépôt ou fourni un cautionnement suffisant selon la pratique du tribunal saisi de l'appel pour garantir qu'il poursuivra dûment l'appel et payera les frais qui peuvent être adjugés à l'intimé et se conformera aux conditions relatives au cautionnement ou autres qu'impose le juge donnant la permission d'en appeler.

L.R. (1985), ch. C-36, art. 14; 2002, ch. 7, art. 135.

Appels

15. (1) Un appel peut être interjeté à la Cour suprême du Canada sur autorisation à cet effet accordée par ce tribunal, du plus haut tribunal de dernier ressort de la province ou du territoire où la procédure a pris naissance.

Juridiction de la Cour suprême du Canada

(2) La Cour suprême du Canada a juridiction pour entendre et décider, selon sa procédure ordinaire, tout appel ainsi permis et pour adjuger des frais.

Stay of proceedings

(3) No appeal to the Supreme Court of Canada shall operate as a stay of proceedings unless and to the extent ordered by that Court.

Security for costs

(4) The appellant in an appeal under subsection (1) shall not be required to provide any security for costs, but, unless he provides security for costs in an amount to be fixed by the Supreme Court of Canada, he shall not be awarded costs in the event of his success on the appeal.

Decision final

(5) The decision of the Supreme Court of Canada on any appeal under subsection (1) is final and conclusive.

R.S., c. C-25, s. 15; R.S., c. 44(1st Supp.), s. 10.

Order of court of one province

16. Every order made by the court in any province in the exercise of jurisdiction conferred by this Act in respect of any compromise or arrangement shall have full force and effect in all the other provinces and shall be enforced in the court of each of the other provinces in the same manner in all respects as if the order had been made by the court enforcing it.

R.S., c. C-25, s. 16.

Courts shall aid each other on request

17. All courts that have jurisdiction under this Act and the officers of those courts shall act in aid of and be auxiliary to each other in all matters provided for in this Act, and an order of a court seeking aid with a request to another court shall be deemed sufficient to enable the latter court to exercise in regard to the matters directed by the order such jurisdiction as either the court that made the request or the court to which the request is made could exercise in regard to similar matters within their respective jurisdictions.

R.S., c. C-25, s. 17.

18. [Repealed, 2005, c. 47, s. 131]

18.1 [Repealed, 2005, c. 47, s. 131]

18.2 [Repealed, 2005, c. 47, s. 131]

18.3 [Repealed, 2005, c. 47, s. 131]

18.4 [Repealed, 2005, c. 47, s. 131]

18.5 [Repealed, 2005, c. 47, s. 131]

18.6 [Repealed, 2005, c. 47, s. 131]

Suspension de procédures

(3) Un tel appel à la Cour suprême du Canada n'a pas pour effet de suspendre les procédures, à moins que ce tribunal ne l'ordonne et dans la mesure où il l'ordonne.

Cautionnement pour les frais

(4) L'appelant n'est pas tenu de fournir un cautionnement pour les frais; toutefois, à moins qu'il ne fournisse un cautionnement pour les frais au montant que fixe la Cour suprême du Canada, il ne lui est pas adjugé de frais en cas de réussite dans son appel.

Décision finale

(5) La décision de la Cour suprême du Canada sur un tel appel est définitive et sans appel.

S.R., ch. C-25, art. 15; S.R., ch. 44(1er suppl.), art. 10.

Ordonnance d'un tribunal d'une province

16. Toute ordonnance rendue par le tribunal d'une province dans l'exercice de la juridiction conférée par la présente loi à l'égard de quelque transaction ou arrangement a pleine vigueur et effet dans les autres provinces, et elle est appliquée devant le tribunal de chacune des autres provinces de la même manière, à tous égards, que si elle avait été rendue par le tribunal la faisant ainsi exécuter.

S.R., ch. C-25, art. 16.

Les tribunaux doivent s'entraider sur demande

17. Tous les tribunaux ayant juridiction sous le régime de la présente loi et les fonctionnaires de ces tribunaux sont tenus de s'entraider et de se faire les auxiliaires les uns des autres en toutes matières prévues par la présente loi, et une ordonnance du tribunal sollicitant de l'aide au moyen d'une demande à un autre tribunal est réputée suffisante pour permettre à ce dernier tribunal d'exercer, en ce qui concerne les questions prescrites par l'ordonnance, la juridiction que le tribunal ayant formulé la demande ou le tribunal auquel est adressée la demande pourrait exercer à l'égard de questions similaires dans les limites de leurs juridictions respectives.

S.R., ch. C-25, art. 17.

18. [Abrogé, 2005, ch. 47, art. 131]

18.1 [Abrogé, 2005, ch. 47, art. 131]

18.2 [Abrogé, 2005, ch. 47, art. 131]

18.3 [Abrogé, 2005, ch. 47, art. 131]

18.4 [Abrogé, 2005, ch. 47, art. 131]

18.5 [Abrogé, 2005, ch. 47, art. 131]

18.6 [Abrogé, 2005, ch. 47, art. 131]

TAB D

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CHAPTER E-14.2

AN ACT RESPECTING ENVIRONMENTAL PROTECTION

(Assented to May 22, 2002)

Analysis

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as the *Environmental Protection Act.*

Definitions

2. In this Act

(a) "activity" means an activity or part of an activity as defined and prescribed by regulation;

(b) "adverse effect" means an effect that impairs or damages the environment and includes an adverse effect to the health of humans;

(c) "air" means air not enclosed in a building, structure, machine, chimney, stack, flue, tank, pipe or other human made structure;

(d) "analyst" means a person appointed as an analyst under section 122;

(e) "approval", unless the context indicates otherwise, means an approval issued under this Act in accordance with Part XI and the regulations with respect to an activity and includes an amended, varied, qualified or renewed approval and terms and conditions that the minister may apply to an approval and to an amended, varied, qualified or renewed approval;

(f) "compliance agreement" means an agreement made as permitted by this Act in accordance with section 105;

(g) "compost" means the treatment of waste and organic matter by aerobic decomposition and microbial action to produce a stable, inert material;

(h) "contaminant" means, unless otherwise defined in the regulations, a substance that causes or may cause an adverse effect;

(i) "contaminated site" means a site designated as a contaminated site by the minister under section 26;

(j) "court", unless the context indicates otherwise, means the Provincial Court of Newfoundland and Labrador;

(k) "dangerous goods" means an organism, substance or thing designated as being dangerous goods under the regulations;

(l) "department", unless the context indicates otherwise, means the department presided over by the minister;

(m) "environment" includes

(i) air, land and water,

(ii) plant and animal life, including human life,

(iii) the social, economic, recreational, cultural and aesthetic conditions and factors that influence the life of humans or a community,

(iv) a building, structure, machine or other device or thing made by humans,

(v) a solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from the activities of humans, or

(vi) a part or a combination of those things referred to in subparagraphs (i) to (v) and the interrelationships between 2 or more of them;

(n) "environmental audit" means an independent assessment of

(i) a person's compliance with this Act and approvals issued under this Act,

(ii) a person's environmental plans, policies, practices, controls and records, and

(iii) the extent to which a person's environmental plans, policies, practices and controls have been implemented;

(o) "environmental effect" means a change in the present or future environment that would result from an undertaking;

(p) "environmental site assessment" means an independent assessment of a site or the operations on a site to

(i) determine whether the environment is or may be subjected to a contaminant,

(ii) determine whether the environment is or may be subjected to the release of a substance in contravention of this Act,

(iii) establish the extent and severity of an adverse effect,

(iv) identify the causes of an adverse effect and identify anything that may cause an adverse effect in the future,

(v) identify ways to repair, mitigate or remedy an adverse effect to the environment resulting from a release of a substance, including a contaminant, and

(vi) identify ways to prevent and mitigate future releases of substances, adverse effects and contamination;

(q) "handle" includes use, storage, distribution, treatment, removal, reduction, manufacture, transport, generation, processing, packaging, re-processing, recycling, selling, offer for sale, disposal of, import into and export from the province;

(r) "inspector" means an inspector appointed under section 89;

(s) "land" includes enclosed land, surface land, land covered by water, subsoil, matter beneath the subsoil or a combination of these;

(t) "minister", unless the context indicates otherwise, means the minister appointed under the *Executive Council Act* to administer this Act;

(u) "municipality" means the cities of Corner Brook, Mount Pearl and St. John's and a municipality as defined in the *Municipalities Act, 1999*;

(v) "package" means a material or item that is used to protect, contain or prepare for transportation a commodity or product and may also be a material or item that is physically attached to a product or its container for the purpose of marketing the product or communicating information about the product;

(w) "person" includes an association of persons, a municipality and the government of the province;

(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);

(y) "person responsible for the contaminated site" means

(i) a person responsible for a substance that is over, in, on or under the contaminated site,

(ii) another person whom the minister considers to be responsible for causing or contributing to the release of a substance into the environment,

(iii) the owner, occupier or operator of the contaminated site,

(iv) a previous owner, occupier or operator of the contaminated site who was the owner, occupier or operator at a time when the substance was released over, in, on or under the contaminated site,

(v) a successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in subparagraphs (i) to (iv), or

(vi) a person who acts as the principal or agent of a person referred to in paragraphs (i) to (v);

(z) "pesticide" includes

(i) an insecticide, avicide, rodenticide and fungicide, that is, a substance or mixture of substances used for the destruction or control of insects, birds, rodents, fungi or other pests and micro-organisms,

(ii) an herbicide, that is, a substance or mixture of substances used for the destruction or control of vegetation, a defoliant, plant growth regulator, plant desiccant or substance used for soil sterilization, and

(iii) a substance or mixture of substances intended for use as a pest control product under the *Pest Control Products Act* (Canada);

(aa) "plant growth regulator" means a substance or mixture of substances that, through physiological action, accelerates or alters the behaviour of a plant, but does not include a plant nutrient, a trace element, plant inoculant or a soil amendment;

(bb) "recovery" means the process of obtaining and reutilizing material or energy from solid, liquid or gaseous waste;

(cc) "recycle" means a process by which a post use material is collected with the intent of processing that material to transform it into another material or substance or for another use;

(dd) "rehabilitation" includes

(i) the conducting of an investigation to determine the concentration and distribution of a substance,

(ii) restoring to a former condition,

(iii) the removal of equipment or a building or other structure or appurtenance,

(iv) the removal of a contaminant from land or water,

(v) the stabilization, contouring, maintenance, conditioning or reconstruction of land,

(vi) the restoration of habitat, populations and the socio-economic integrity of valued ecosystem components, and

(vii) another procedure, operation or requirement of this Act;

(ee) "release", except in Part X, means to spill, discharge, dispose of, spray, inject, inoculate, abandon, deposit, leak, seep, pour, emit, empty, throw, dump, place, drain, pump or exhaust;

(ff) "reuse" means the direct reapplication of a product, material, substance or item for the same or a different purpose, in its original form;

(gg) "sewage" means residential, municipal, commercial or industrial water borne and solid wastes and storm water runoff that would, if left untreated, cause an adverse effect;

(hh) "sewage works" means works for or incidental to the collection transmission, treatment and disposal of sewage or a part of those sewage works;

(ii) "storage" and "storing" means the holding of a substance for a temporary period at the end of which it is intended to be processed, used, transported, treated or disposed of;

(jj) "substance" means

(i) matter that may become dispersed in the environment,

(ii) matter that is capable of becoming transformed in the environment into matter referred to in subparagraph (i),

(iii) heat, radiation or another form of energy,

(iv) an odour or a thing that causes an odour or which may be transformed to produce or cause an odour,

(v) an organism, whether or not it is living, and

(vi) a combination of things referred to in subparagraphs (i) to (v);

(kk) "sustainable development" means meeting the needs of present generations without compromising the ability of future generations to meet their needs;

(ll) "treat" means to apply a method, technique or process, including neutralization, stabilization, filtration and settling that is designed to change the physical, chemical or biological concentration, character or composition of a substance;

(mm) "undertaking" includes an enterprise, activity, project, structure, work or proposal and a modification, abandonment, demolition, decommissioning, rehabilitation and an extension of them that may, in the opinion of the minister, have a significant environmental effect;

(nn) "waste" includes rubbish, offal, slime, tailings, effluent, sludge, sewage, garbage, refuse, scrap, litter or other substances or waste products that would or could cause an adverse effect;

(oo) "waste dangerous goods" means a substance designated as waste dangerous goods by regulation;

(pp) "waste management system" means a system for the collection, transportation, handling, storage, treatment, utilization, diversion, recycling, reuse, recovery, reduction or disposal of waste;

(qq) "water" includes a surface or subterranean source of fresh or salt water within the jurisdiction of the province, whether or not that source usually contains liquid or frozen water, water above the bed of the sea that is within the jurisdiction of the province, a river, stream, brook, creek, watercourse, lake, pond, spring, lagoon, ravine, gully, wetland, canal and other flowing or standing water and land at any time covered by water;

(rr) "waterworks" means a public, commercial or industrial works for the collection, production, treatment, storage, supply and distribution of water or a part of those works; and

(ss) "works" includes all property, buildings, erections, plant, machinery, installations, materials, dams, canals, devices, fittings, apparatus, appliances and equipment.

PART I
APPLICATION

Crown bound

3. (1) This Act is binding upon the Crown, its corporations, agents, administrators, servants, employees and agencies.

(2) In this section "Crown" means the Crown in right of the province and in so far as the legislative competence of the province extends, includes the Crown in right of Canada.

Conflict with another Act

4. (1) Where there is a conflict between this Act and another Act, this Act prevails.

(2) A licence, permit, approval or other authorization issued under another enactment does not constitute an approval under this Act, unless otherwise stated in the regulations.

(3) A provision of another Act or of a regulation or by-law of a municipality is not in conflict with this Act by reason only that it imposes a restriction or requires a condition for the protection of the environment in excess of that required by this Act.

(4) Nothing in this Act affects or impairs the validity of a regulation or by-law of a municipality or an authorization issued by a municipality relating to matters dealt with in this Act unless the regulation, by-law or authorization is in conflict or inconsistent with this Act.

PART II
ENVIRONMENTAL EDUCATION AND RESEARCH

Research

5. (1) For the purpose of fostering an understanding of and responsibility for the environment the minister may

(a) compile information and undertake research related to the environment, environmental education and sustainable development;

(b) provide a person with access to environmental information in the control of the department;

(c) convene conferences and conduct seminars and educational and training programs relating to the environment and sustainable development;

(d) maintain a library consisting of publications and other information relating to environmental matters;

(e) develop, publish and distribute educational material with respect to the environment and sustainable development; and

(f) assist and support the government of the province or other persons in designing, producing and delivering throughout the province, educational programs pertaining to sustainable development and other information.

(2) The minister may contribute to, sponsor or undertake research that he or she considers necessary to achieve the purpose of this Act and may enter into agreements with respect to that research and development.

Boards and committees

6. The minister may establish and appoint members to those boards, committees and councils that are necessary or desirable to help and advise him or her in carrying out this Act or a Part of this Act.

PART III
RELEASE OF SUBSTANCES

Prohibition

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.

Report of release

8. (1) A person responsible for the release of a substance into the environment that has caused, is causing or may cause an adverse effect shall, as soon as that person knows or ought to know of the release, report it to

(a) the department or other appropriate agency at its emergency telephone number or as required by the department or agency;

(b) the owner of the substance if the person reporting knows or is readily able to ascertain the identity of the owner;

(c) the person having care, management or control of the substance if the person reporting knows or is readily able to ascertain the identity of that person; and

(d) another person who the person reporting knows or ought to know may be directly affected by the release.

(2) A person responsible for a release of a substance into the environment that is in excess of an amount, concentration, level or rate of release expressly authorized under this Act or an approval issued under this Act, shall immediately, as soon as that person knows or ought to know of the release, report it as required under this Act or an approval to the persons identified in paragraphs (1)(a) to (d).

Remedial measures

9. A person responsible for the release of a substance shall, at that person's own cost, and as soon as that person knows or ought to have known of the release of a substance into the environment that has caused, is causing or may cause an adverse effect,

(a) take all reasonable measures to

(i) prevent, reduce and remedy the adverse effects of the substance, and

(ii) remove or otherwise dispose of the substance in a manner that minimizes adverse effects;

(b) take other measures required by an inspector or the department; and

(c) rehabilitate the environment to a standard that the department may adopt or require.

Voluntary reporting

10. (1) A person may provide the department with detailed information that the person has obtained through an environmental audit or an environmental site assessment about that person's non-compliance with this Act or an approval.

(2) Where information is provided to the department under subsection (1), the minister may

(a) negotiate and enter into a compliance agreement with that person to address an adverse effect to the environment or another circumstance arising from the non-compliance; or

(b) issue an order under Part XIII.

Department emergency measures

11. (1) Where an inspector is of the opinion that a release of a substance into the environment may cause, is causing, has caused or may have caused an environmental emergency, the inspector may take those emergency measures that the inspector considers necessary to prevent, reduce and remedy the adverse effect and the emergency.

(2) Subsection (1) applies whether or not the substance release is or was expressly authorized by and is or was in compliance with this Act or an approval issued under this Act.

Classification of releases of substances

12. The minister may

(a) classify or allow the release of substances for the purposes of this Part;

(b) determine the concentration, amount, level and rate of release of a substance into the environment; and

(c) determine the manner in which a report of a release of a substance is to be made and the contents of the report.

PART IV
WASTE DISPOSAL AND LITTER

Restrictions, guidelines and recyclable content

13. The minister may

(a) establish restrictions and prohibitions on waste management systems;

(b) determine minimum content requirements for recycled and recyclable materials in specific substances or products and establish restrictions on the production or sale of products that cannot be reused or recycled;

(c) develop codes and guidelines for the use and content of recyclable materials in the manufacture of new substances or products; and

(d) require that waste management plans be submitted to the department.

Litter and waste

14. (1) The minister shall, in accordance with the regulations, encourage the prevention and reduction of litter with respect to

(a) waste disposal practices at construction sites, commercial and service outlets and other places where litter is or may accumulate;

(b) requiring organizers of public and private events to have available and maintain at the sites of the events an adequate number of receptacles for recyclable materials, litter and waste disposal;

(c) regulating or prohibiting activities that result or may result in the unlawful disposal of litter or waste including the placement of flyers on utility poles, vehicles, buildings, structures or other things;

(d) regulating the disposal of waste on land and on, in or under water and ice; and

(e) generally providing for matters that will prevent or reduce litter.

(2) The minister may designate a material that is to be banned, reduced, composted, recycled or restricted in use.

(3) A person shall not sell or use a material designated under subsection (2) except as permitted by the minister.

Waste disposal sites

15. The minister may establish standards and requirements for waste disposal sites and waste management systems in the province.

Prohibition

16. A person shall not

(a) release waste upon land whether or not that land is developed or covered by water or release waste in a building or structure unless that waste is disposed of in a receptacle or container placed or located specifically for the purposes of collection of that waste and in accordance with this or another Act of the province; or

(b) use facilities or equipment for the collection, handling, treatment, transportation, storing, processing, use and disposal of waste that is not part of a waste disposal site or a waste management system for which an approval is issued.

Prohibition

17. (1) A person who is the owner of a motor vehicle in the province and any other person shall not abandon that motor vehicle in the province.

(2) For the purpose of this section, a motor vehicle shall be considered to be abandoned where that vehicle has been left unattended without lawful authority and appears to be abandoned by reason of its age, appearance, mechanical condition or lack of identification plates.

(3) For the purpose of this section, in the absence of evidence to the contrary, a person who is the last registered owner of an abandoned motor vehicle shall be considered to have been the owner of that motor vehicle at the time of its abandonment.

(4) For the purpose of subsection (3), a certificate issued by the Registrar of Motor Vehicles appointed under section 4 of the *Highway Traffic Act*, signed by him or her and stating that a person is the last registered owner of a motor vehicle is, in the absence of evidence to the contrary, proof of the fact so certified without proof of the signature or official character of the person appearing to have signed the certificate.

(5) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of not less than $1,000 and not more than $5,000, or to a term of imprisonment of not more than 6 months or to both a fine and imprisonment.

(6) Where a person has been convicted under subsection (5), the court shall order that

(a) the person remove the abandoned motor vehicle as directed by the minister; or

(b) the person pay to the minister, the cost of the removal of the abandoned motor vehicle,

and the court shall order that

(c) the person's driver's licence is suspended for 6 months or until the abandoned motor vehicle has been removed or until payment has been made under paragraph (b), whichever is lesser.

(7) Where an order to suspend a person's driver's licence is made under paragraph (6)(c), sections 60 and 61 of the *Highway Traffic Act* apply, with the necessary changes, to the court which made that order.

(8) Section 7 of the *Provincial Offences Act* shall not apply in relation to an offence under this section.

(9) An information or complaint under subsection (1) may be made on or before a date 10 years from the date when the matter of the information or complaint arose or 10 years after September 1, 1993, whichever date is later.

PART V
WASTE MANAGEMENT

Definitions

18. In this Part

(a) "board" means the Multi-Materials Stewardship Board continued under section 19;

(b) "reduction" means the elimination of packaging or reduction of the weight, volume or toxicity of packaging or an item;

(c) "waste management" means the collection, transportation, handling, storage, treatment, utilization, diversion, recycling, reuse, recovery, reduction and disposal of waste material;

(d) "waste management program" means a program containing provisions or requirements for waste management, and includes related research; and

(e) "waste material" means

(i) refuse, garbage, rubbish, litter, scrap and discarded material, including tailings, effluent, sludge, sewage, offal, and machinery, and a product, vehicle or other item that is dumped, discarded, abandoned or otherwise disposed of,

(ii) a material or thing that may be a danger to the health of human beings, animals, wildlife or fish, or is of unsightly appearance, and

(iii) a substance designated as waste material in the regulations.

Board continued

19. (1) The Multi-Materials Stewardship Board continued under section 4 of the *Waste Management Act* is continued as a corporation.

(2) The board is an agent of the Crown.

(3) The board shall support and promote the protection, enhancement and wise use of the environment through waste management programs.

Waste management program

20. (1) The board may submit a proposal for a waste management program to the minister.

(2) In accordance with a written request by the minister, the board shall submit a proposal for a waste management program to the minister.

(3) Subject to the approval of the Lieutenant-Governor in Council, the minister may

(a) approve all or part of a waste management program;

(b) approve an amendment to a waste management program;

(c) impose conditions on a waste management program;

(d) direct the board to implement and operate a waste management program;

(e) direct the board to include a provision or requirement in a waste management program; and

(f) cancel a waste management program.

(4) The minister may reject all or part of a waste management program.

(5) The board shall not implement or operate a waste management program except in accordance with the approval of the minister.

(6) The minister may implement and operate a waste management program approved by the Lieutenant-Governor in Council.

(7) A program for waste management operated under the authority of the board at the time this Act comes into force is considered to be a waste management program approved under this section.

Authority of minister

21. The minister may

(a) undertake or support and encourage research into waste management; and

(b) require the board, a corporation, institution or government department or agency to collect and record data or other information on waste management, and to provide a report as required by the minister.

PART VI
AIR QUALITY MANAGEMENT

Air quality standards and controls

22. The minister may

(a) establish provincial ambient air quality standards or objectives necessary for the protection of the environment;

(b) establish performance specifications, standards and methods for air quality testing and monitoring;

(c) maintain inventories and establish reporting requirements for emissions of air contaminants;

(d) establish air emission standards for odour, toxic, and common and nuisance air contaminants;

(e) establish performance specifications for vehicles, equipment, operations and facilities emissions;

(f) test, monitor and regulate the release of substances into the air;

(g) establish performance standards and specifications for wood burning stoves and furnaces and other stationary combustion sources;

(h) adopt overall provincial emission caps, production goals and product manufacturing, sale and use restrictions with respect to air quality issues of regional or global significance;

(i) conduct or require air quality and meteorological studies and compliance monitoring programs;

(j) establish regional air quality management programs to address the combined effects of multiple sources of air contaminants;

(k) enter into agreements respecting air quality management issues;

(l) prepare model by-laws and otherwise cooperate with municipalities to promote improved air quality; and

(m) establish requirements with respect to the design, operation or maintenance of equipment, devices or services that may emit or limit the issuance of contaminants into the air and require alterations to them where they are not functioning in the manner that the minister considers to be appropriate.

Air quality management areas

23. (1) The minister may establish air quality management areas in the province.

(2) The minister may develop an air quality management plan for an area established under subsection (1) and may, in accordance with the regulations, establish for that area an air quality advisory committee which may investigate air quality issues and make recommendations to the minister with respect to air quality management plans and programs for that area.

(3) An air quality management plan may consider and apply to the combined effects of air contaminants that originate from more than one source.

PART VII
CONTAMINATED SITES

Application

24. This Part applies regardless of when a substance became present in, on, over or under a contaminated site.

Agreements

25. The minister may enter into compliance agreements and other agreements and establish programs and other measures that he or she considers necessary to

(a) restore and secure a contaminated site and the environment affected by a contaminated site;

(b) pay the costs of restoring and securing a contaminated site and the environment affected by a contaminated site; and

(c) impose levies and establish a fund for the purposes of paragraphs (a) and (b),

whether or not a person responsible for a contaminated site cannot be identified or is unable to pay for those costs.

Contaminated sites

26. (1) Where the minister is of the opinion that a substance that may cause, is causing or has caused an adverse effect is present in an area of the environment, the minister may designate that area of the environment as a contaminated site.

(2) The minister shall establish standards, criteria or guidelines with respect to contaminated sites before making a designation under subsection (1).

(3) This section applies notwithstanding that

(a) an administrative or enforcement remedy has been pursued under this Act or under another law with respect to the contaminated site;

(b) the substance was released in accordance with this or another Act or law;

(c) the release of the substance was not prohibited under this Act;

(d) the substance originated from a source other than the contaminated site; and

(e) there are 2 or more owners of the area or a part of the area that is a contaminated site.

(4) The minister may cancel the designation of a contaminated site made under this section.

Notice of determination

27. (1) The minister shall

(a) give notice, in writing, of a preliminary determination of a designation of a contaminated site, make a final determination on whether or not the site is contaminated and give notice, in writing, together with reasons, of the final determination to

(i) a person responsible for the contaminated site that the minister considers appropriate,

(ii) an owner of real property directly affected by the designation, and

(iii) a municipality where the contaminated site is located; and

(b) give notice to a person referred to in paragraph (a) respecting the cancellation of a designation as a contaminated site.

(2) A person, owner or municipality referred to in paragraph (1)(a) shall be provided with an opportunity to comment on the preliminary determination referred to in that paragraph before a final determination is made.

Remedial plan

28. (1) A person responsible for a contaminated site

(a) shall submit to the minister an environmental site assessment and a remedial action plan with respect to the contaminated site; and

(b) may enter into an agreement with the minister or with another person responsible for the contaminated site or with both the minister and the other person, providing for the remedial action to be taken with respect to the contaminated site and providing for the apportionment of the costs of taking that action.

(2) The minister may issue an approval for a plan submitted under subsection (1) or may reject that plan.

Rehabilitation of site

29. The minister may

(a) determine the manner in which the contaminated site must be rehabilitated or managed and establish a time within which that rehabilitation is to occur;

(b) issue standards and criteria to be used in determining whether rehabilitation and management have been completed in a satisfactory manner;

(c) enter into agreements respecting the liability of secured creditors, receivers, receiver managers, trustees in bankruptcy, executors, administrators, mortgagees in possession and other persons;

(d) determine persons or classes of persons who are responsible for the rehabilitation of a contaminated site; and

(e) establish programs and enter into compliance agreements and other agreements to rehabilitate or manage a contaminated site or prevent the creation of a contaminated site.

PART VIII
DANGEROUS GOODS

Handling of dangerous goods

30. Unless authorized under this Part or the regulations, a person who handles dangerous goods or waste dangerous goods shall do so in a manner that ensures that the dangerous goods or waste dangerous goods do not cause an adverse effect.

Dangerous and waste dangerous goods

31. (1) The minister may

(a) stipulate the quantity or concentration of dangerous and waste dangerous goods that may be released into the environment, either alone or in combination with another substance from any source;

(b) stipulate the manner and conditions under which dangerous goods and waste dangerous goods may be released into the environment, either alone or in combination with another substance;

(c) establish procedures with respect to the sampling, analysis, tests, measurements or monitoring of dangerous goods and waste dangerous goods and the submission of the results to the minister; and

(d) establish procedures requiring and respecting the submission of samples of dangerous goods and waste dangerous goods to the minister.

(2) The minister may direct a person responsible for dangerous goods and waste dangerous goods to

(a) take specified precautions regarding their handling;

(b) handle them in accordance with specified terms and conditions;

(c) remove them from a specified location;

(d) take them to a specified location;

(e) take specified precautions with respect to the treatment or decontamination of a place affected by them;

(f) take specified precautions with respect to the future use of a place affected by them;

(g) undertake, with respect to them, investigations, tests, surveys or other actions, and report the results to the minister;

(h) ensure that persons involved in handling dangerous goods, waste dangerous goods and other environmentally hazardous substances are properly trained;

(i) take specified precautions with respect to their storage;

(j) construct storage facilities in accordance with standards, codes, guidelines, requirements, restrictions and policies that the minister may specify;

(k) make the necessary arrangements for treating, processing and disposing of the dangerous goods or waste dangerous goods within the time specified by the minister; and

(i) in the opinion of the minister an adverse effect that was not reasonably foreseeable at the time the approval was issued has occurred or may occur,

(ii) the term or condition relates to a monitoring or reporting requirement, or

(iii) the purpose of the amendment, addition or deletion is to address matters related to a temporary suspension of the activity of the approval holder;

(b) cancel or suspend an approval

(i) where the minister believes on reasonable and probable grounds that there has been or may be a breach or default of the approval, or

(ii) where new, relevant or corrected information with respect to an adverse effect that actually results or may result from an activity to which the approval relates has been brought to the attention of the minister, or

(iii) for a failure to pay a penalty imposed under this Act with respect to the activity governed by the approval; and

(c) correct a typographical error in an approval.

(3) The minister shall give notice in writing, together with reasons, to the approval holder at least 30 days in advance of making an amendment, addition or deletion under paragraph (2)(a).

(4) The minister shall immediately upon amending, cancelling or suspending an approval under paragraph (2)(a) or (b) give notice, in writing, together with reasons, of the amendment, cancellation or suspension to the approval holder.

Prohibition re: approval transfer

86. (1) A person shall not transfer, sell, lease, assign or otherwise dispose of an approval without the written consent of the minister.

(2) A consent under subsection (1) shall be given not more than 60 days after receiving an application or request for a consent unless

the minister notifies the applicant otherwise, in writing, within 15 days of his or her receipt of that application or request.

New information

87. Where new and relevant information respecting adverse effects that actually result or may result from the activity to which the approval relates comes to the attention of the approval holder after the issuance of the approval, that approval holder shall immediately submit that information to the minister.

Variation of approval

88. (1) An approval holder or a person acting on behalf of an approval holder may apply to the minister to temporarily vary a term or condition of an approval.

(2) The minister may vary an approval for a fixed period of time if he or she considers that the proposed variation is not likely to cause an adverse effect and shall advise the approval holder of the decision.

(3) The minister may

(a) impose a term or condition that he or she considers appropriate with respect to a variation of an approval;

(b) specify requirements as to the manner in which the activity to which the approval variation relates be carried out or operated; or

(c) amend a term or condition of, add a term or condition to, or delete a term or condition from the varied approval.

(4) A variation of an approval is in effect only for the period fixed by the minister and, notwithstanding a provision of this Act, during that period, the terms and conditions of the approval or the requirements of the regulations that are not varied by the minister apply to the activity.

PART XII
INSPECTION AND INVESTIGATION

Inspectors and duties of employees

89. (1) The minister may designate persons or a class of persons as inspectors for the purposes of this Act or a Part of this Act.

(2) For the purpose of this Act, a member of the Royal Newfoundland Constabulary or of the Royal Canadian Mounted Police shall be considered to have been designated under subsection (1).

(3) The minister may, in writing, authorize a person employed in the department, or a person, or class of persons appointed or designated under subsection (1), to perform and exercise those duties and powers conferred by this Act upon the minister that may, in the opinion of the minister, be conveniently performed or exercised by that person and the performance or exercise of those duties or powers by that authorized person or class of persons shall be of the same effect as if they were performed or exercised by the minister.

Inspector: powers and immunities

90. An inspector, in carrying out duties under this Act, has and may exercise in the province all the powers, authorities and immunities of a peace officer as defined in the *Criminal Code* (Canada).

Application for investigation

91. (1) Where 2 or more persons believe that another person is contravening or has contravened this Act, they may jointly request that the department investigate the alleged contravention.

(2) The department shall require that a request made under subsection (1), be accompanied by an affidavit of the persons making the request made under oath or affirmation,

(a) stating the names and addresses of the persons making the request;

(b) stating the nature of the alleged contravention and the name of each person alleged to be involved in its commission; and

(c) containing a concise statement of the evidence supporting the allegations.

(3) A person who intentionally provides false information under subsection (1) or (2) is guilty of an offence.

Investigation process

92. (1) Upon receipt of a request under section 91, the minister shall investigate the matter to determine the facts of the alleged contravention.

(2) Not more than 90 days after receipt of a request under section 91, the minister shall report to the persons who made the request

on the progress of the investigation and action proposed to be taken in respect of the alleged contravention.

(3) The minister may discontinue an investigation if he or she is of the opinion that the alleged contravention does not require further investigation.

(4) Where an investigation is discontinued, the minister shall

(a) prepare a statement in writing stating the reasons for its discontinuance; and

(b) send a copy of the statement to the persons who made the request and the person believed to be responsible for the alleged contravention.

Condition of approval

93. It is a condition of every approval that the holder shall immediately, on request, permit inspectors to carry out inspections authorized under this Act of a place, other than a dwelling place, to which the approval or varied approval relates.

Powers of inspectors

94.(1) An inspector may, at reasonable times, enter upon waste disposal and waste management sites, business premises, a building or property of an approval holder, proponent of an undertaking or a licence holder under Part IX, that is not a dwelling place, where it is reasonably necessary to determine compliance with this Act, and may

(a) ascertain that the operations, activities or undertaking of the approval holder, proponent or licence holder comply with this Act or an approval, varied approval, exemption or release conditions or licence issued under this Act;

(b) ascertain the extent to which a substance may cause, is causing or has caused an adverse effect, and the cause of an adverse effect;

(c) determine the manner in which an adverse effect may be prevented, eliminated, reduced or ameliorated and determine how the environment may be rehabilitated;

(d) inspect all plans, specifications, drawings, books, records, reports, registers, analyses, data and documents relating to the operation or activity located there;

(e) inspect a place in or from which the inspector has reasonable grounds to believe a substance is being, has been or may be released into the environment;

(f) inspect waterworks and investigate the source of a water supply;

(g) inspect sewage works and the location of effluent and sewage discharge;

(h) require a person having the care, management or control of the thing or substance to detain the thing at the place where it is found or remove the thing from the place where it is found and give a receipt for it;

(i) for the purpose of analysis, take from the business premises, building or property samples of substances in a volume or quantity which, in the opinion of the inspector, is sufficient to permit an analysis of the substance to determine its nature, composition, source or compliance with this Act, an approval, varied approval or licence or with the terms of an undertaking or environmental assessment under this Act; and

(j) analyze or test a substance on the premises, building or property,

and the approval holder, proponent of an undertaking or licence holder or a person in charge of that building, business premises or property shall produce for inspection the plans, specifications, drawings, books, records, reports, registers substances, analyses, data and documents relating to the approval, amended or varied approval, licence, undertaking, operation or activity that the inspector may require.

(2) The production of instructions in writing signed by the minister or an officer of the department authorized by the minister is sufficient evidence of the authority of the inspector.

(3) Information and samples gathered during inspections under subsection (1) shall be used for no other purpose than to determine compliance with this Act.

Search and seizure

95. (1) Where an inspector believes on reasonable grounds that a person is contravening or has contravened this Act or a term or condi-

tion of an approval, varied approval, licence, environmental assessment of an undertaking approved, issued, released or carried out under this Act, the inspector may, with a warrant issued under subsection (2), enter commercial or private premises or property or a vehicle in the province and

(a) search and inspect the property and things located there;

(b) examine the contents of the commercial or private premises, property or vehicle;

(c) inspect and make copies of books of account, records, reports, registers, financial statements, correspondence, plans, specifications, drawings, analysis, data or other documents that may give evidence of a contravention of this Act or a term or condition of an approval, varied approval, environmental assessment or an undertaking exempted or released under this Act;

(d) seize, take away and hold a thing that would give evidence that there has been a contravention of this Act or of a term or condition of an approval, varied approval, environmental assessment or an undertaking exempted or released under this Act;

(e) seize and take away the things referred to in paragraph (c) and shall, upon the request of the owner of them, make copies of them and shall return the things seized to that owner as soon as possible;

(f) take samples of substances in a volume or quantity which, in the opinion of the inspector is sufficient to permit an analysis of the substance to determine its nature, composition, source or compliance with this Act, an approval, varied approval or the terms and conditions of an undertaking exempted or released under this Act; and

(g) make those inquiries that the inspector considers necessary to determine if there has been a contravention of this Act.

(2) A provincial court judge who is satisfied upon oath or affirmation that there are reasonable grounds for believing that there is in a commercial or private premises or property anything that will give

evidence with respect to a contravention of this Act or an approval, varied approval, licence, or the terms and conditions of an undertaking exempted or released under this Act, may issue a warrant authorizing the inspector named in the warrant to enter the commercial or private premises or property, search and inspect the property and things located there and search for and seize anything that will provide evidence with respect to a contravention of this Act or an approval, varied approval, licence, terms and conditions of an undertaking exempted or released under this Act, subject to the conditions that may be specified in the warrant.

(3) The owner or person in charge of the premises, property or vehicle referred to in this section and a person found there shall give an inspector reasonable help to enable the inspector to carry out his or her duties and functions under this section and shall provide the information that the inspector may reasonably require.

(4) Notwithstanding subsection (1), an inspector may exercise the power of search referred to in that subsection without a warrant issued under subsection (2) where the conditions for obtaining the warrant exist and by reason of exigent circumstances it would not be practical to obtain the warrant.

(5) For the purpose of subsection (4), exigent circumstances include circumstances in which the delay necessary to obtain the warrant would result in danger to human life or safety, the loss or destruction of evidence or long term or irreversible destruction to the environment.

Additional persons

96. An inspector or other person, in carrying out duties or exercising powers under this Act, may be accompanied by one or more persons considered by them to be necessary to enable them to carry out those duties and exercise those powers.

Prohibition

97. (1) An employer shall not

(a) dismiss or threaten to dismiss an employee;

(b) discipline or suspend an employee;

(c) impose a penalty upon an employee; or

(d) intimidate or coerce an employee,

who refuses to carry out an action which is contrary to this Act, or because the employee has reported or proposes to report to a person an act or omission that contravenes, or that the employee has reasonable grounds to believe may contravene, this Act, or a term or condition of an approval, varied approval, licence, or an undertaking exempted or released under this Act.

(2) A person who intentionally reports or provides false or misleading information under subsection (1) is guilty of an offence.

Action prohibition

98. (1) An inspector, officer or employee of the department, a member of a board or committee established under this Act or other person authorized under this Act is not personally liable in an action or a proceeding for or in respect of an act or thing done or omitted by him or her in good faith in the exercise or purported exercise of his or her duties or powers under this Act or for costs in connection with an action or proceeding.

(2) Notwithstanding subsection 5(4) of the *Proceedings Against the Crown Act*, the liability of the Crown in respect of anything done or omitted to be done by an inspector, officer or an employee of the department, a member of a board or committee or other person in the performance of his or her duties under this Act or the regulations is the same as if subsection (1) were not in force.

PART XIII
ORDERS

Order

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;

(c) post a bond or other form of security acceptable to the minister or pay money to the Crown in an amount that the minister considers will ensure compliance with an order made under this section;

(d) install, remove, replace or alter equipment, a tank, container or thing designed to control, contain, reduce or eliminate the release into the environment of a substance;

(e) shut down or make a change to waterworks and to a source of water supply in accordance with directions set out in the order;

(f) shut down, alter or add to sewage works in accordance with directions set out in the order; and

(g) where that person is using, handling, storing, applying or disposing of dangerous goods, waste dangerous goods or pesticides, notwithstanding anything contained in an approval or licence, take the action specified in the order to manage, eliminate, remedy or prevent contamination or other adverse effects by those substances,

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.

(4) Where a stop order is issued under this section, the inspector, minister or other employee shall, by written notice, not more than 48 hours after issuing that order, give to the person against whom the order is made reasons for it and shall immediately forward a copy of the stop order and the notice to the minister.

(5) The minister may authorize an official, officer or employee of the department to issue amend, vary, revoke and give reasons for an order under this section.

Amendment or revocation of order

100. (1) The minister may, with respect to an order made under this Part,

(a) amend a term or condition of, add a term or condition to, or delete a term or condition from an order;

(b) revoke an order; and

(c) amend a typographical error in an order.

(2) A copy of an order amended or revoked under subsection (1) shall be served as required by this Act on the person to whom the original order was directed and served.

Effects of order

101. (1) An order made under this Part may deal with more than one substance and may be directed to one or more persons.

(2) An order under this Part remains in effect until revoked by the minister.

(3) An order issued under this Part is binding on the heirs, successors, executors, administrators, trustees, receivers, receiver managers and assigns of the person to whom it is directed.

(4) An order made under this Part may be issued against a person responsible regardless of whether or not the act or omission that resulted in the issuance of the order, occurred before or after the coming into force of this Act.

Compliance

102. (1) Where an order is served upon the person to whom it is directed, that person shall comply with the order immediately or, where a period of compliance is specified in the order, within the time period specified.

(2) Where a person to whom an order is directed does not comply with the order or part of the order or service of that order cannot be carried out, the minister may take whatever action he or she considers necessary to carry out the terms of the order.

(3) Where the minister

(a) takes an action under subsection (2) to carry out the terms of an order; or

(b) incurs costs, expenses or charges in order to investigate and monitor the compliance of a person with an order, the reasonable costs, expenses or charges incurred by the minister in taking that action are recoverable by the minister from the person to whom the order was directed as a debt owed to the Crown and the minister shall notify the person against whom the order is made of his or her determination of the amount of the recoverable costs, expenses and charges.

(4) Where a person defaults in paying a debt owed to the Crown in accordance with subsection (3), the minister may issue a certificate stating the amount due and remaining unpaid to the Crown and the name of the person by whom it is payable, and file the certificate with the Registrar of the Supreme Court and when that certificate is filed with the Registrar of the Supreme Court, it is of the same effect and all proceedings may be taken on the certificate, as if it were a judgment of the Trial Division for the recovery of the amount stated in the certificate against the person named in the certificate.

(5) Where a stop order is made under this Part, costs and expenses incurred by the proponent or person responsible for the stopped undertaking or activity with respect to that undertaking or activity shall not be recoverable from the Crown.

(6) For the purpose of subsection (3), reasonable costs, expenses or charges include costs incurred by the department in investigating and responding to a matter to which an order relates or the failure to comply with an order, and costs and expenses for lodging, salaries, remuneration, transportation and meals incurred by the department in monitoring a person required to comply with an order and in carrying out an action necessary to comply with an order.

Joint and individual liability

103. (1) Where an order under this Act is directed to more than one person, all persons named in the order are jointly and individually responsible for carrying out the terms of the order and are jointly and individually liable for payment of the reasonable costs, expenses or charges described in subsection 102(3).

(2) Subsection (1) does not apply to an order where the minister and the persons responsible have executed an agreement with respect to an apportionment of cost.

(3) Notwithstanding subsection (1), where an order is directed to a person who is acting in the capacity of executor, administrator, receiver, receiver manager, trustee or mortgagee in possession in respect

of a contaminated site, the liability of that person is limited to the value of the assets the person is administering or in possession of, less reasonable costs and fees.

(4) The limitation of liability under subsection (3) does not apply if the executor, administrator, receiver, receiver manager, trustee or mortgagee in possession makes decisions or takes an action that contributes to a further accumulation or the continued release of a substance on becoming aware of the presence of the substance in, on, over or under the contaminated site.

(5) Where 2 or more persons are liable to pay compensation by way of damages, costs, expenses or charges under this Part, those persons are jointly and individually liable to the person suffering the loss or damage giving rise to that compensation.

(6) A right of contribution or indemnification under subsection (5) may be enforced by action in a court of competent jurisdiction.

Insurance

104. (1) Where a person to whom an order is issued under this Part is insured under an insurance policy that provides for coverage for a cost, expense, loss, damage or charge, the insurer shall, subject to the terms of the relevant policy, pay to the minister, on demand in writing, a cost, expense, loss, damage or charge incurred by the minister in accordance with costs, expenses or charges recoverable under section 102.

(2) The minister may enter into an agreement to share the proceeds of an insurance policy, to which the minister is entitled under subsection (1), proportionally, or on another basis that the minister considers appropriate, with other persons who have incurred a cost, expense, loss, damage or charge in the circumstances described in subsection (1), and the insurer shall pay the proceeds in accordance with that agreement.

(3) Where an insurer has made a payment under subsection (1) or (2), the payment is considered to be a payment with respect to the cost, expense, loss, damage or charge resulting from the event for which coverage was in effect.

(4) Nothing in this section requires an insurer to pay to the minister or another person a sum or sums totalling in excess of the coverage limits of an insurance policy, or a sum or sums the insurer would otherwise not be obliged to pay under the policy.

(5) The minister may, without restricting the rights of the minister against the holder of the insurance policy, commence an action directly against the insurer for the purpose of enforcing the rights of the minister under this Act.

Compliance agreements

105. (1) Where the minister may enter into a compliance agreement under this Act, and where he or she has reason to believe that a person is or will be in contravention of this Act, or the terms and conditions of an approval, and the minister has information which would have him or her believe that,

(a) the contravention is beyond the control of the person; and

(b) the contravention is not likely to cause short or long term health problems to persons or environmental damage beyond the assimilative capacity of the immediate environment; and

(c) failure to enter into a compliance agreement would result in serious economic hardship to the person without benefit to others or the environment,

and the minister is of the opinion that a compliance agreement is in the public interest and within the purpose of this Act, the minister may, in the form that he or she requires, enter into a written compliance agreement with the person and that agreement shall contain the terms and conditions required by this section and the minister.

(2) A compliance agreement made under this section shall be for a fixed period of time that the minister considers to be reasonable.

(3) A compliance agreement made under this section may

(a) require that monitoring data collected as required by a term of that agreement or under this Act or the terms and conditions of an approval issued under this Act, be provided to the department as required by the minister;

(b) contain a term whereby the person entering the compliance agreement agrees to refrain from engaging in specified actions that caused the alleged contravention of this Act or of an approval;

(c) contain a term requiring a person to develop and implement a pollution prevention plan acceptable to the minister;

(d) specify persons to be compensated for damages to public property;

(e) require that financial security be made or compensation, in whole or in part, be paid to the Crown for the cost of remedial or preventive action taken by or caused to be taken by the minister as a result of a contravention;

(f) establish the liability of secured creditors, receivers, receiver managers, trustees in bankruptcy, executors, administrators and others;

(g) require that the Crown be compensated, in whole or in part, for the cost of investigations related to a contravention;

(h) require that pollution control devices be upgraded;

(i) require that an activity that caused a contravention be carried out in a specified manner;

(j) require that a person comply with other terms and conditions that the minister considers appropriate; and

(k) require that a notice of the terms and conditions of the compliance agreement be published in the *Gazette*.

(4) The minister may, with the written consent of other parties to the compliance agreement, amend a term or condition of, add a term or condition to or delete a term or condition from that agreement.

(5) A compliance agreement is in force only for the time period indicated in the compliance agreement and, notwithstanding that agreement, during that time

(a) the terms and conditions set out in the compliance agreement; or

(b) this Act and the terms and conditions of an approval that are not varied by the compliance agreement, apply to the activity that is the subject of the compliance agreement.

(6) A person who adheres to a compliance agreement shall not be charged with an offence under this Act with respect to a contravention of this Act that is the subject of that agreement but evidence of the contravention may be introduced as evidence in subsequent court proceedings.

(7) A compliance agreement made under this section shall not prohibit the minister and the department from exercising powers under this Act that comply with or are outside the substance of the compliance agreement.

(8) Where a person does not adhere to a compliance agreement made under this section or has not complied with the compliance agreement within the time specified in that agreement, that agreement shall be considered to not be in force.

(9) Notwithstanding subsection (8), the minister and a person who is a party to a compliance agreement may, as a term of that agreement, agree to an alternative form of dispute resolution where a term or condition of that agreement is in dispute, provided that the alternative resolution method shall occur and be completed within the time during which that agreement is in effect, and

(a) where a resolution of the matter occurs within the required time, the terms of that resolution shall be incorporated into the compliance agreement; and

(b) where a resolution of the matter does not occur within the required time, the compliance agreement shall be considered not to be in force.

Administrative penalties

106. (1) Where the minister is of the opinion that a person has committed, as specified by regulation, a contravention of this Act for which an administrative penalty applies, the minister or a person authorized by the minister may, in writing, notify that person that he or she is to pay to the government of the province an administrative penalty in the amount set out in the notice for each day or part of a day the contravention occurs or continues to occur.

(2) A person who pays an administrative penalty with respect to a contravention may not be charged with an offence under this Act with respect to that contravention.

(3) Where a person fails to pay an administrative penalty in accordance with a notification under subsection (1), the government of the province may recover the amount owing in respect of the penalty as a debt owed to the Crown.

(4) For the purpose of this section, an administrative penalty is a monetary penalty imposed in accordance with the regulations for a contravention of this Act.

PART XIV
APPEALS AND REMEDIES

Appeal to minister

107. (1) A person to whom subsection 108(1) does not apply, who is aggrieved by a decision or an order made under this Act, may appeal that decision or order to the minister by notice in writing, within 60 days of receipt of that decision or order, stating the reasons for the appeal.

(2) The minister shall notify the appellant, in writing, of his or her decision within 30 days of receipt of the notice of appeal.

(3) The minister may dismiss the appeal, allow the appeal or make another decision or order that may be made under this Act.

Appeal to Trial Division

108. (1) A proponent of an undertaking or another person aggrieved by an order made under section 99 with respect to a matter arising under Part X may, within 30 days from the date of the order, appeal against the order to a judge of the Trial Division by filing a notice of appeal in the office of the Registrar of the Supreme Court and by serving a copy of the notice of appeal on the minister or deputy minister.

(2) A person aggrieved by an order or decision of the minister under this Act respecting the

(a) terms or conditions of an approval;

(b) amendment, addition or deletion of terms and conditions of an approval; and

(c) cancellation of an approval,

may, within 30 days of the order or the decision appeal on a question of law or on a question of mixed law and fact to the Trial Division.

(3) Notwithstanding a rule or practice to the contrary, a notice of appeal shall

(a) set out in detail the allegations of the appellant and the grounds upon which the order or decision is appealed against; and

(b) be signed by the appellant or the appellant's solicitor.

(4) An appellant shall, within 30 days after the service of the notice of appeal under this section, apply to a judge for the appointment of a day for the hearing of the appeal and shall, not fewer than 14 days before the hearing, serve upon the minister or deputy minister a written notice of the day appointed for the hearing.

(5) The minister shall produce before the judge hearing the appeal all papers and documents in his or her possession affecting the matter of the appeal.

(6) Where an appellant does not comply with subsection (4) the notice of appeal shall be considered void and the decision being appealed shall be considered to be final.

(7) The judge shall hear an appeal made under subsection (1) and the evidence brought forward by the appellant and the Crown in a summary manner and shall decide the matter of the appeal by

(a) upholding, amending or revoking the order or decision; or

(b) making another order or decision that the judge considers proper in the circumstances.

(8) An appeal made under this section shall be dismissed by the Trial Division if the sole ground for relief established on the appeal is a defect in form or a technical irregularity.

(9) A judge may make an order as to costs for or against the appellant or the Crown and may fix the amount of those costs.

(10) An appeal may only be taken from a decision of a judge of the Trial Division to the Court of Appeal on a point of law raised upon the hearing of the appeal by the judge of the Trial Division.

(11) The filing of an appeal under this section shall not affect the order or decision appealed from and the order shall remain in force pending the outcome of the appeal.

Civil remedy

109. A civil remedy for an act or omission is not suspended or affected by reason only that the act or omission is an offence under this Act or gives rise to a remedy under this Act and nothing in this Act shall be considered to repeal, reduce or remove a remedy available to a person under another Act of the province, at common law or under an Act of the government of Canada or of another province of Canada.

Evidence of damage

110. Where a person is convicted of an offence under this Act, the conviction is evidence of negligence and a person who suffers loss or damage as a result of the conduct that constituted the offence may, in a court of competent jurisdiction, sue for loss or damages suffered as a result of the conduct which constituted the offence.

PART XV
REGULATIONS

Regulations

111. (1) The Lieutenant-Governor in Council may make regulations

(a) defining a word that is not already defined in this Act for the purpose of this Act;

(b) respecting releases of substances, environmental rehabilitation funds and levies, remediation, terms for the rehabilitation of the environment, allocation of liability and compliance and other agreements made under this Act;

(c) respecting environmental audits and environmental site assessments;

(d) adopting a code or standards of an agency or government of another province, or of Canada;

(e) respecting environmentally sensitive areas;

(f) respecting the burning of waste and respecting waste disposal practices at construction sites, commercial and service outlets, public and private events, public areas and the placement of flyers on utility poles, vehicles, structures and generally respecting all things which may result in the unlawful disposal of litter;

(g) respecting emergency measures, the training of persons to respond to emergencies that relate to environmental emergencies and hazards;

(h) respecting the establishment of standards and requirements for waste separation, management and disposal programs, waste management, the implementation and operation of waste management programs, waste facilities, waste disposal systems, waste management agencies and sites, recycling, including the recycling of dangerous goods and their treatment when not recyclable and designating substances as waste;

(i) respecting the Multi-Material Stewardship Board continued under section 19;

(j) respecting the restricting, prohibiting or enabling of the use or sale of products that may be composted;

(k) respecting the payment of a deposit for the recycling of oil and tires, on a package or container or a class of packaging or container and requiring the development of packaging waste reduction and prevention plans and respecting the establishment and management of a waste management trust fund and the disbursement of money from that fund;

(l) prohibiting or restricting the manufacture, composition, formulation, sale, use or disposal of a substance that may directly or indirectly have the potential by way of biological, chemical or physical means to release substances into the environment and which may have an adverse effect;

(m) providing for the issuing of approvals to persons dealing with ozone depleting substances and vehicles, machinery or equipment containing those substances and respecting ozone depleting substances and their replacement substances;

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CHAPTER L-3.1

AN ACT TO RATIFY AND GIVE THE FORCE OF LAW TO THE LABRADOR INUIT LAND CLAIMS AGREEMENT

(Assented to December 6, 2004)

Analysis

RSNL1990 cC-43 as amended

23. Section 7 of the *Crown Royalties Act* is amended by renumbering it as subsection 7(1) and by adding immediately after that subsection the following:

(2) This Act shall be read and applied in conjunction with the *Labrador Inuit Land Claims Agreement Act* and, where a provision of this Act is inconsistent or conflicts with a provision, term or condition of the *Labrador Inuit Land Claims Agreement Act*, the provision, term or condition of the *Labrador Inuit Land Claims Agreement Act* shall have precedence over the provision of this Act.

RSNL1990 cD-21

24. The *Detention of Intoxicated Persons Act* is amended by adding immediately after section 2 the following:

Labrador Inuit rights

2.1 This Act shall be read and applied in conjunction with the *Labrador Inuit Land Claims Agreement Act* and, where a provision of this Act is inconsistent or conflicts with a provision, term or condition of the *Labrador Inuit Land Claims Agreement Act*, the provision, term or condition of the *Labrador Inuit Land Claims Agreement Act* shall have precedence over the provision of this Act.

SNL1994 cE-5.1 as amended

25. The *Electrical Power Control Act, 1994* is amended by adding immediately after section 2 the following:

Labrador Inuit rights

2.1 (1) This Act and regulations made under this Act shall be read and applied in conjunction with the *Labrador Inuit Land Claims Agreement Act* and, where a provision of this Act or regulations made under this Act is inconsistent or conflicts with a provision, term or condition of the *Labrador Inuit Land Claims Agreement Act*, the provision, term or condition of the *Labrador Inuit Land Claims Agreement Act* shall have precedence over the provision of this Act or a regulation made under this Act.

(2) Where, under this Act the public utilities board issues a licence, the public utilities board may add to that licence terms and conditions that the licensee must comply with in order to ensure compliance with the terms and conditions of the *Labrador Inuit Land Claims Agreement Act.*

RSNL1990 cE-8 as amended

26. Section 22 of the *Emergency Measures Act* is amended by renumbering it as subsection 22(1) and by adding immediately after that subsection the following:

(2) Notwithstanding subsection (1), this Act and regulations made under this Act shall be read and applied in conjunction with the *Labrador Inuit Land Claims Agreement Act* and, where a provision of this Act or regulations made under this Act is inconsistent or conflicts with a provision, term or condition of the *Labrador Inuit Land Claims Agreement Act*, the provision, term or condition of the *Labrador Inuit Land Claims Agreement Act* shall have precedence over the provision of this Act or a regulation made under this Act.

SNL2001 cE-10.1

27. The *Endangered Species Act* is amended by adding immediately after section 5 the following:

Labrador Inuit rights

5.1 This Act and regulations made under this Act shall be read and applied in conjunction with the *Labrador Inuit Land Claims Agreement Act* and, where a provision of this Act or regulations made under this Act is inconsistent or conflicts with a provision, term or condition of the *Labrador Inuit Land Claims Agreement Act*, the provision, term or condition of the *Labrador Inuit Land Claims Agreement Act* shall have precedence over the provision of this Act or a regulation made under this Act.

SNL2002 cE-14.2

28. (1) Section 4 of the *Environmental Protection Act* is amended by adding immediately after subsection (4) the following:

(5) Notwithstanding subsections (1) to (4), this Act and regulations made under this Act shall be read and applied in conjunction with the *Labrador Inuit Land Claims Agreement Act* and, where a provision of this Act or regulations made under this Act is inconsistent or conflicts with a provision, term or condition of the *Labrador Inuit Land Claims Agreement Act*, the provision, term or condition of the *Labrador Inuit Land Claims Agreement Act* shall have precedence over the provision of this Act or a regulation made under this Act.

(2) The Act is amended by adding immediately after section 4 the following:

Terms added to approvals, licences etc.

4.1 Where, under this Act, the minister issues an approval, licence or other authorization the minister may add to that approval, licence or other authorization terms and conditions that the holder of the approval, licence or authorization is required to comply with in order to ensure compliance with the terms and conditions of the *Labrador Inuit Land Claims Agreement Act*.

SNL1995 cE-16.1 as amended

29. Section 10 of the *Executive Council Act* is amended by renumbering it as subsection 10(1) and by adding immediately after that subsection the following:

(2) A minister may enter into an agreement with the Nunatsiavut government respecting matters for which an agreement is required under the *Labrador Inuit Land Claims Agreement Act*.

(3) In subsection (2), "Nunatsiavut government" means the Nunatsiavut Government as defined in the *Labrador Inuit Land Claims Agreement Act*.

RSNL1990 cE-18 as amended

30. The *Exhumation Act* is amended by adding immediately after section 5 the following:

Labrador Inuit rights

6. This Act shall be read and applied in conjunction with the *Labrador Inuit Land Claims Agreement Act* and, where a provision of this Act is inconsistent or conflicts with a provision, term or condition of the *Labrador Inuit Land Claims Agreement Act*, the provision, term or condition of the *Labrador Inuit Land Claims Agreement Act* shall have precedence over the provision of this Act.

RSNL1990 cE-19 as amended

31. The *Expropriation Act* is amended by adding immediately after section 3 the following:

Labrador Inuit rights

3.1 Notwithstanding section 3, this Act shall be read and applied in conjunction with the *Labrador Inuit Land Claims Agreement Act* and, where a provision of this Act is inconsistent or conflicts with a provision, term or condition of the *Labrador Inuit Land Claims Agreement Act*, the provision, term or condition of the *Labrador Inuit Land Claims Agreement Act* shall have precedence over the provision of this Act.

RSNL1990 cF-2 as amended

32. The *Family Law Act* is amended by adding immediately after section 2 the following:

Labrador Inuit rights

2.1 This Act and regulations made under this Act shall be read and applied in conjunction with the *Labrador Inuit Land Claims Agreement Act* and, where a provision of this Act or regulations made under this Act is inconsistent or conflicts with a provision, term or condition of the *Labrador Inuit Land Claims Agreement Act*, the provision, term or condition of the *Labrador Inuit Land Claims Agreement Act* shall have precedence over the provision of this Act.

CHAPTER 12

AN ACT TO AMEND THE ENVIRONMENTAL PROTECTION ACT

(Assented to May 26, 2006)

Analysis

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

1. Section 78 of the *Environmental Protection Act* is amended by adding immediately after subsection (3) the following:

(4) The minister may authorize an official, officer or employee of the department or the Department of Government Services to issue, vary, amend or revoke approvals under this Part.

2. Section 91 of the Act is repealed and the following substituted:

91. (1) A person may, at any reasonable time, report a concern regarding the enforcement of this Act to the department, and the department may take the action with respect to that report considered necessary in the circumstances.

(2) Notwithstanding subsection (1) and sections 94, 95 and 96, where a person has a reasonable belief that a person has contravened or

is contravening this Act and the regulations, that person may request that the department investigate the alleged contravention.

(3) A request made under subsection (2) shall be accompanied by an affidavit of the person making the request made under oath or affirmation

(a) stating the name and address of the person making the request;

(b) stating the nature of the alleged contravention and the name of each person alleged to be involved in it; and

(c) containing a concise statement of the evidence supporting the allegations.

(4) A person who intentionally provides false information under subsection (2) or (3) is guilty of an offence.

3. (1) Subsections 92(1) and (2) of the Act are repealed and the following substituted:

Process on investigation request

92. (1) Where the minister receives 2 or more requests to investigate the same matter under section 91, the minister shall investigate the matter to determine the facts of the alleged contravention.

(2) Not more than 90 days after the receipt of the second request required under subsection (1), the minister shall report to the persons who made the request on the progress of the investigation and action proposed to be taken in respect of the alleged contravention.

(2) Section 92 of the Act is amended by adding immediately after subsection (4) the following:

(5) Nothing in this section prohibits or constrains the powers of inspectors or other persons to carry out investigations under sections 94, 95, or 96.

4. (1) Subsection 99(5) of the Act is repealed and the following substituted:

(5) The minister may authorize an official, officer or employee of the department or the Department of Government Services to issue, amend, vary, revoke and give reasons for an order under this section.

(2) Section 99 of the Act is amended by adding immediately after subsection (5) the following:

(6) Where, before the coming into force of subsection (5), the minister delegated authority to an official, officer or employee of the Department of Government Services to make an order under this section, that order is valid as if it had been made after the coming into force of subsection (5).

5. Section 101 of the Act is amended by adding immediately after subsection (2) the following:

(2.1) An order made under this Part remains in effect during an appeal by the person who is subject to the order until a decision is made with respect to that appeal.

CHAPTER 32

AN ACT TO AMEND THE ENVIRONMENTAL PROTECTION ACT NO. 2

(Assented to December 12, 2006)

Analysis

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

1. Subsection 111(1) of the *Environmental Protection Act* is amended by adding immediately after paragraph (rr) the following:

(rr.1) respecting ticketable offences and penalties for those offences;

2. Section 115 of the Act is amended by adding immediately after subsection (6) the following:

(7) Notwithstanding subsection (1), where, with respect to an offence under this Act or regulations made under this Act, other than under subsection 114(2), a complaint is laid and a summons issued by means of a ticket in accordance with the *Provincial Offences Act,* a person found guilty of that offence is liable on summary conviction to a fine that may be established by regulation.

TAB 6

P. 4, 9-10

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-036133-094

DATE: **AUGUST 26, 2009**

PRESENT: THE HONOURABLE MR. JUSTICE CLÉMENT GASCON, J.S.C.

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"
Petitioners

And
ERNST & YOUNG INC.
Monitor

CLAIMS PROCEDURE ORDER

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[1] **CONSIDERING** the Petitioners' Motion for the Approval of a Claims Procedure Order;

[2] **CONSIDERING** the representations of the parties;

THE COURT:

[1] **GRANTS** this Motion for the Approval of a Claims Procedure Order.

JG1793 [2] **ISSUES** this Order divided under the following headings:

(a) Definitions

(b) Notice of Claims

(c) Filing of Canadian Proofs of Claim

(d) Form of Canadian Proofs of Claim

(e) Determination of Claims, Subsequent Claims and Restructuring Claims

(f) Notice of Transferees

(g) General Provisions

Definitions

[3] **ORDERS** that, for purposes of this Order, the following terms shall have the following meanings:

(a) "**ACCC**" means Abitibi-Consolidated Company of Canada;

(b) "**ACI**" means Abitibi-Consolidated Inc.;

(c) "**BCFPI**" means Bowater Canadian Forest Products Inc.;

(d) "**BI**" means Bowater Incorporated;

(e) "**Business Day**" means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Montreal, Quebec;

(f) "**Canadian Claims Package**" means the document package which shall include French and English versions of the Notice to Creditors, Canadian Instruction Letter, a Canadian Proof of Claim and such other materials as the Canadian Petitioners and Partnerships consider necessary or appropriate;

(g) "**Canadian Claims Procedure**" means the procedures outlined in this Order in connection with the assertion of Claims, Subsequent Claims and Restructuring Claims against one or more of the Canadian Petitioners or Partnerships, as amended or supplemented by further Order of the Court;

(h) "**Canadian Credit Facility**" means the revolving and term credit facilities pursuant to a 364-day credit agreement among BCFPI as borrower, BI as guarantor, the lenders from time-to-time party thereto and The Bank of Nova Scotia as administrative agent (collectively, the "**Canadian Credit Lenders**");

(i) **"Canadian Credit Lenders"** has the meaning ascribed to it in paragraph 3(h), above;

(j) **"Canadian Filing Date"** means April 17, 2009;

(k) **"Canadian Instruction Letter"** means the French and English versions of the letter regarding completion of a Canadian Proof of Claim against the Canadian Petitioners or Partnerships, which letter shall be substantially in the form attached hereto as Appendix "D";

(l) **"Canadian Petitioners"** means (i) Abitibi-Consolidated Inc. and the other petitioners listed on Appendix "A" hereto; and (ii) Bowater Canadian Holdings Inc. and the other petitioners listed on Appendix "B" hereto; provided that **"Canadian Petitioners"** shall not include the 18.6 Petitioners listed on Appendix "C" hereto;

(m) **"Canadian Proof of Claim"** means the French and English versions of the form to be completed and filed by a Creditor setting forth its purported Claim, Subsequent Claim or Restructuring Claim, which proof of claim shall be substantially in the form attached hereto as Appendix "E";

(n) **"Canadian Secured Notes"** means those U.S. $413 million 13.75% senior secured notes due April 1, 2011 issued by ACCC;

(o) **"Canadian Unsecured Notes"** means those U.S. $102 million 10.50% notes due June 15, 2010 issued by BCFPI; those U.S. $98 million 10.63% notes due June 15, 2010 issued by BCFPI; those U.S. $22 million 10.26% notes due January 15, 2011 issued by BCFPI; those U.S. $70 million 10.60% notes due January 15, 2011 issued by BCFPI; those U.S. $600 million 7.95% notes due November 15, 2011 issued by Bowater Canada Finance Corporation; those U.S. $125 million 10.85% debentures due November 30, 2014 issued by BCFPI; those U.S. $500 million 8.55% notes due August 1, 2010 issued by ACI; those U.S. $293 million 15.5% exchange notes due July 15, 2010 issued by ACCC; those U.S. $200 million 7.75% notes due June 15, 2011 issued by ACCC; those U.S. $200 million floating rate notes due June 15, 2011 issued by ACCC; those U.S. $350 million 6.00% notes due June 20, 2013 issued by ACCC; those U.S. $450 million 8.375% notes due April 1, 2015 issued by ACCC; those U.S. $100 million 7.40% debentures due April 1, 2018 issued by ACI; those U.S. $250 million 7.50% debentures due April 1, 2028 issued by ACI; those U.S. $250 million 8.50% debentures due August 1, 2029 issued by ACI; and those U.S. $450 million 8.85% debentures due April 1, 2030 issued by ACI;

(p) **"CCAA"** means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

(q) **"Chapter 11 Creditor Matrix"** means the Chapter 11 Debtors' creditor matrix transmitted to the Clerk of the U.S. Court at the commencement of the U.S. Proceedings.

(r) **"Chapter 11 Debtors"** means the U.S. Debtors and the Cross-Border Petitioners.

(s) **"Chapter 11 Schedules"** means the schedules and statements prepared in the U.S. Proceedings setting forth the assets and liabilities of the Chapter 11 Debtors and which are posted on the website of Epiq Bankruptcy Solutions, LLC (at http://chapter11.epiqsystems.com/ABH);

(t) **"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;

(u) **"Claims Bar Date"** means 4:00 p.m. (Eastern Standard Time) on November 13, 2009 or such other date as may be ordered by the Court;

(v) **"Court"** means the Superior Court of Quebec;

(w) **"Creditor"** means any Person asserting a Claim, Subsequent Claim or Restructuring Claim;

(x) **"Cross-Border Petitioners"** means Bowater Canadian Holdings Inc., Bowater Canada Finance Corporation, Bowater Canadian Limited, AbitibiBowater Canada Inc., BCFPI, Bowater LaHave Corporation and Bowater Maritimes Inc. who filed for protection under the CCAA and commenced U.S. Proceedings;

(y) "**Excluded Claim**" means (i) any Claim, Secured Claim or Restructuring Claim secured by the Abitibi Administration Charge, the Bowater Administration Charge, the Abitibi D&O Charge, the Bowater D&O Charge, the ACI DIP Charge or the BI DIP Lenders Charge (as each term is defined in the Second Amended Initial Order); (ii) any Claim, Subsequent Claim or Restructuring Claim of the Pre-Petition Lenders or any other Person under the Pre-Petition Facilities (a "**Pre-Petition Lender Claim**"); (iii) subject to paragraphs 11 and 12 of this Order, any Claim, Subsequent Claim or Restructuring Claim of a Noteholder for principal, interest and other applicable fees and charges under any Canadian Unsecured Notes and/or any Canadian Secured Notes (a "**Noteholder Claim**"); (iv) any Intercompany Claim including those secured by the ACI Inter-Company Advances Charge and the BI Inter-Company Advances Charge (as each term is defined in the Second Amended Initial Order); (v) any Claim, Subsequent Claim or Restructuring Claim of an employee of any of the Canadian Petitioners or Partnerships who was employed by that Canadian Petitioner or Partnership as of April 16, 2009; (vi) any Claim, Subsequent Claim or Restructuring Claim asserted by any person, including pension plan administrators, or pension authorities, in respect of the 20 registered pension plans for the Canadian Petitioners' Canadian employees; or (vii) any other Claim, Subsequent Claim or Restructuring Claim ordered by the Court to be treated as an Excluded Claim;

(z) "**Governmental Agency**" means any federal, provincial, state or local government, agency or instrumentality thereof or similar entity, howsoever designated or constituted exercising executive, legislative, judicial, regulatory or administrative functions in Canada, the United States, or elsewhere;

(aa) "**Intercompany Claim**" means any Claim, Subsequent Claim or Restructuring Claim of a Canadian Petitioner, a Partnership or one of the U.S. Debtors against a Canadian Petitioner or Partnership;

(bb) "**Known Creditors**" means (i) those Creditors to whom the Canadian Petitioners or Partnerships owed money as of the Canadian Filing Date, which obligation remains unpaid in whole or in part as evidenced by the books and records of the Canadian Petitioners and Partnerships; and (ii) those Creditors with Subsequent Claims;

(cc) "**Monitor**" means Ernst & Young Inc., in its capacity as the Court-appointed Monitor of the Canadian Petitioners and Partnerships;

(dd) **"Noteholder"** means the holder of Canadian Secured Notes and/or Canadian Unsecured Notes;

(ee) **"Noteholder Claim"** has the meaning ascribed to it in paragraph 3(y), above;

(ff) **"Notice to Creditors"** means the French and English versions of the notice substantially in the form attached hereto as Appendix "F";

(gg) **"Partnerships"** means Bowater Canada Finance Limited Partnership, Bowater Pulp and Paper Canada Holdings Limited Partnership and Abitibi-Consolidated Finance LP;

(hh) **"Person"** means any individual, partnership, firm, joint venture, trust, entity, corporation, body corporate, unincorporated association, or organization, trade union, employee or other association, Governmental Agency, or similar entity, howsoever designated or constituted and any individual or other entity owned or controlled by or which is the agent of any of the foregoing;

(ii) **"Plan"** means any plan of compromise or arrangement filed by one or more of the Canadian Petitioners pursuant to the CCAA;

(jj) **"Pre-Petition Facilities"** means the credit facilities available pursuant to the Term Loan Facility, the U.S. Credit Facility and the Canadian Credit Facility;

(kk) **"Pre-Petition Lenders"** means the Term Loan Lenders, the U.S. Credit Lenders and the Canadian Credit Lenders;

(ll) **"Pre-Petition Lender Claim"** has the meaning ascribed to it in paragraph 3(y), above;

(mm) **"Restructuring Claim"** means any Claim arising as a result of or in connection with the repudiation, termination or restructuring by the Canadian Petitioners or Partnerships of any contract, lease, employment or other agreement after August 31, 2009; provided that **"Restructuring Claim"** shall not include an Excluded Claim;

(nn) **"Second Amended Initial Order"** means the Second Amended Initial Order of the Honourable Mr. Justice Clement Gascon, J.S.C. of the Court dated May 6, 2009;

(oo) **"Subsequent Claim"** means any Claim arising as a result of or in connection with the repudiation, termination or restructuring by the Canadian Petitioners or Partnerships of any contract, lease or other agreement after the Canadian Filing Date but on or before August 31, 2009; provided that **"Subsequent Claim"** shall not include an Excluded Claim;

(pp) **"Term Loan Facility"** means the term loan facility pursuant to the Credit and Guaranty Agreement dated as of April 1, 2008 between ACCC as borrower, ACI as guarantor and the other guarantors party thereto, the lenders party thereto and Wells Fargo, N.A. as administrative agent (collectively, the **"Term Loan Lenders"**);

(qq) **"Term Loan Lenders"** has the meaning ascribed to it in paragraph 3(pp), above;

(rr) **"U.S. Claims Package"** means the document package which shall include a copy of an instruction letter, a U.S. Proof of Claim and such other materials as the U.S. Debtors consider necessary or appropriate;

(ss) **"U.S. Claims Procedure"** means the claims process approved by the U.S. Court to be conducted within the U.S. Proceedings in respect of the U.S. Debtors;

(tt) **"U.S. Court"** means the United States Bankruptcy Court for the District of Delaware;

(uu) **"U.S. Credit Facility"** means the revolving credit facility pursuant to a 5-year credit agreement among BI, Bowater Newsprint South LLC, Bowater Alabama LLC and Bowater Newsprint South Operations LLC as borrowers, the lenders from time-to-time party thereto and Wachovia as administrative agent (collectively, the **"U.S. Credit Lenders"**);

(vv) **"U.S. Credit Lenders"** has the meaning ascribed to it in paragraph 3(uu), above;

(ww) **"U.S. Debtors"** means AbitibiBowater Inc., AbitibiBowater US Holding LLC, Donohue Corp., Abitibi Consolidated Sales Corporation, Abitibi-Consolidated Alabama Corporation, Alabama River Newsprint Company, Abitibi-Consolidated Corporation, Augusta Woodlands, LLC, Tenex Data Inc., AbitibiBowater US Holding 1 Corp., Bowater Ventures Inc., Bowater Incorporated, Bowater Nuway Inc., Bowater Nuway Mid-States Inc., Catawba Property Holdings LLC, Bowater Finance Company Inc., Bowater South American Holdings Incorporated, Bowater America Inc., Lake Superior Forest Products Inc., Bowater Newsprint South LLC, Bowater Newsprint South Operations LLC, Bowater Finance II LLC, Bowater Alabama LLC, Coosa Pines Golf Club Holdings LLC and Abitibi-Consolidated Finance LP; provided that **"U.S. Debtors"** shall not include the Cross-Border Petitioners;

(xx) **"U.S. Proceedings"** means the proceedings commenced on April 16, 2009 by the Chapter 11 Debtors under chapter 11 of title 11 of the United States Bankruptcy Code in the U.S. Court; and

(yy) **"U.S. Proof of Claim"** means a proof of claim filed in the U.S. Claims Procedure.

Notice of Claims

[4] **ORDERS** that the Monitor shall cause a Canadian Claims Package to be sent to each Known Creditor by regular prepaid mail within 20 days from the date of this Order.

[5] **ORDERS** that the Monitor and Epiq Bankruptcy Solutions, LLC shall cause a U.S. Claims Package to be sent to each entity that is listed on the Chapter 11 Creditor Matrix that may hold a claim, as such term is defined in the U.S. Bankruptcy Code, against the Canadian Petitioners (including the Cross-Border Petitioners) by regular prepaid mail within 20 days from the date of this Order but in no event less than 60 days from the Claims Bar Date.

[6] **ORDERS** that the Monitor shall cause (i) the French and English versions of the Notice to Creditors to be placed in the Montreal Gazette and the Globe and Mail (National Edition); (ii) the English version of the Notice to Creditors to be placed in the Wall Street Journal and USA Today; and (iii) the French version of the Notice to Creditors to be placed in La Presse, Le Soleil and Le Quotidien, one day per week for two weeks within 20 days from the date of this Order.

[7] **ORDERS** that the Monitor shall cause the Canadian Claims Package, which includes the Notice to Creditors, to be posted on the Monitor's French and English bilingual website (at www.ey.com/ca/abitibibowater) within 20 days from the date of this Order.

[8] **ORDERS** that the Monitor shall cause a copy of the Canadian Claims Package to be sent to any Person requesting such material within 7 days from the date of the request.

[9] **ORDERS** that, in the event that the Monitor believes that any action taken by a Canadian Petitioner or Partnership may give rise to a Claim, Subsequent Claim or a Restructuring Claim or the Monitor is advised by any Person that such Person believes it has a Claim, Subsequent Claim or a Restructuring Claim, the Monitor shall thereafter cause a copy of the Canadian Claims Package to be sent to the Creditor.

<u>**Filing of Canadian Proofs of Claim**</u>

Claims and Subsequent Claims

[10] **ORDERS** that every Creditor asserting a Claim or Subsequent Claim, other than an Excluded Claim, against a Canadian Petitioner (including the Cross-Border Petitioners) or Partnership shall set out its aggregate Claim or Subsequent Claim in a Canadian Proof of Claim and deliver that Canadian Proof of Claim to the Monitor so that it is actually received by the Monitor by no later than the Claims Bar Date.

[11] **ORDERS** that the indenture trustee(s) or similar agent(s) under the Canadian Secured Notes and the Canadian Unsecured Notes shall be required each to deliver one aggregate Canadian Proof of Claim on behalf of the Noteholders in respect of the aggregate amount owed to the Noteholders for which such indenture trustee or similar agent acts. Subject to paragraph 12 hereof, individual Noteholders are not required to file individual Canadian Proofs of Claim.

[12] **ORDERS** that any Noteholder that wishes to assert a Claim or Subsequent Claim other than a Noteholder Claim shall be required to deliver a Canadian Proof of Claim.

[13] **ORDERS** that any Pre-Petition Lender that wishes to assert a Claim or Subsequent Claim other than a Pre-Petition Lender Claim shall be required to deliver a Canadian Proof of Claim.

[14] **ORDERS** that a U.S. Proof of Claim timely filed against a Cross-Border Petitioner in accordance with the U.S. Claims Procedure will be deemed to be a Canadian Proof of Claim that has been timely delivered to the Monitor in accordance with the Canadian Claims Procedure. If a Canadian Proof of Claim is delivered to the Monitor in accordance with the Canadian Claims Procedure and a U.S. Proof of Claim is also filed in accordance with the U.S. Claims Procedure in respect of the same Claim or Subsequent Claim against the same Cross-Border Petitioner, the last timely filed Claim or Subsequent Claim shall govern in the Canadian Claims Procedure. For greater certainty, if a Creditor (i) does not file a Canadian Proof of Claim in respect of a Claim or Subsequent Claim against a Canadian Petitioner or Partnership; and (ii) does not file a U.S. Proof of Claim in respect of a Claim or Subsequent Claim against a Canadian Petitioner or Partnership; and (iii) that Creditor's Claim or Subsequent Claim in the amount provided for in the Chapter 11 Schedules is deemed accepted in accordance with the U.S. Claims Procedure and the U.S. Proceedings, then that Claim or Subsequent Claim is deemed accepted only for the purposes of the U.S. Proceedings and does not constitute a timely filed Canadian Proof of Claim in accordance with the Canadian Claims Procedure and these proceedings.

[15] **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 Partnerships 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.

Restructuring Claims

[16] **ORDERS** that every Creditor asserting a Restructuring Claim, other than an Excluded Claim, against a Canadian Petitioner (including the Cross-Border Petitioners) or Partnership shall set out its aggregate Restructuring Claim in a Canadian Proof of Claim and deliver that Canadian Proof of Claim to the Monitor so that it is actually received by the Monitor by such later date to be established for such purpose by the Court.

[17] **ORDERS** that paragraphs 11 to 15 of this Order apply to Canadian Proofs of Claim delivered in respect of Restructuring Claims.

Form of Canadian Proofs of Claim

[18] **ORDERS** that each Creditor shall file a separate Canadian Proof of Claim in respect of each Canadian Petitioner or Partnership against which it purports to have a Claim, Subsequent Claim or Restructuring Claim.

[19] **ORDERS** that any Claim, Subsequent Claim or Restructuring Claim denominated in any currency other than Canadian dollars shall, for the purposes of this Order, be converted to and shall constitute obligations in Canadian dollars, such calculation to be effected using the Bank of Canada's noon spot rate as of the Canadian Filing Date (U.S. dollar claims are to be converted at the rate of US$1 = CDN$1.2146).

[20] **ORDERS** that each Creditor shall reduce its Claim, Subsequent Claim or Restructuring Claim by the amount of (a) any payment thereon made by a Canadian Petitioner or Partnership to the Creditor; (b) the application of any volume or other discount in reduction of such Claim, Subsequent Claim or Restructuring Claim by a Canadian Petitioner or Partnership; and (c) any other subsequent credit applied by a Canadian Petitioner or Partnership against such Claim, Subsequent Claim or Restructuring Claim or the Creditor.

Determination of Claims, Subsequent Claims and Restructuring Claims

[21] **ORDERS** that the applicable procedures for reviewing and determining Claims, Subsequent Claims and Restructuring Claims shall be established by further Order of the Court. Proper notice of all motions for any Orders to approve such procedures shall

be provided to the service list in these proceedings and any Person who has timely filed a Canadian Proof of Claim against the Canadian Petitioners or Partnerships in accordance with the Canadian Claims Procedure.

Notice of Transferees

[22] **ORDERS** that, if a Creditor or any subsequent holder of a Claim, Subsequent Claim or Restructuring Claim, who has been acknowledged by the Canadian Petitioners or Partnerships and the Monitor as the holder of the Claim, Subsequent Claim or Restructuring Claim, transfers or assigns that Claim, Subsequent Claim or Restructuring Claim to another Person, neither the Canadian Petitioners nor Partnerships nor the Monitor shall be required to give notice to or to otherwise deal with the transferee or assignee of the Claim, Subsequent Claim or Restructuring Claim as the holder of such Claim, Subsequent Claim or Restructuring Claim unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, has been delivered to the Canadian Petitioners or Partnerships and the Monitor. Thereafter, such transferee or assignee shall, for all purposes hereof, constitute the holder of such Claim, Subsequent Claim or Restructuring Claim and shall be bound by notices given and steps taken in respect of such Claim, Subsequent Claim or Restructuring Claim.

[23] **ORDERS** that, if a Creditor or any subsequent holder of a Claim, Subsequent Claim or Restructuring Claim who has been acknowledged by the Canadian Petitioners or Partnerships and the Monitor as the holder of the Claim, Subsequent Claim or Restructuring Claim transfers or assigns the whole of such Claim, Subsequent Claim or Restructuring Claim to more than one Person or part of such Claim, Subsequent Claim or Restructuring Claim to another Person or Persons, such transfers or assignments shall not create separate Claims, Subsequent Claims or Restructuring Claims and such Claims, Subsequent Claims or Restructuring Claims shall continue to constitute and be dealt with as a single Claim, Subsequent Claim or Restructuring Claim notwithstanding such transfers or assignments. Neither the Canadian Petitioners nor Partnerships nor the Monitor shall, in each such case, be required to recognize or acknowledge any such transfers or assignments and shall be entitled to give notices to and to otherwise deal with such Claim, Subsequent Claim or Restructuring Claim only as a whole and then only to and with the Person last holding such Claim, Subsequent Claim or Restructuring Claim provided such Creditor may, by notice in writing delivered to the Canadian Petitioners or Partnerships and the Monitor, direct that subsequent dealings in respect of such Claim, Subsequent Claim or Restructuring Claim, but only as a whole, shall be dealt with by a specified Person and in such event, such Person shall be bound by any notices given or steps taken in respect of such Claim, Subsequent Claim or Restructuring Claim with such Creditor.

General Provisions

[24] **ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and under the Second Amended Initial Order, shall assist the

Canadian Petitioners and Partnerships in connection with the matters described herein, and is hereby authorized and directed to take such other actions and fulfill such other roles as are contemplated by this Order and such other roles in keeping with its position as an officer of this Court.

[25] **ORDERS** that any notice or communication (including, without limitation, Canadian Proofs of Claim) to be given under this Order by a Creditor to the Monitor or the Canadian Petitioners or Partnerships shall be in writing and, where applicable, in substantially the form provided for in this Order and will be sufficiently given only if delivered by electronic mail, facsimile, courier or registered mail addressed to:

> Ernst & Young Inc., Monitor of Abitibi-Consolidated Inc., Bowater Canadian Forest Products Inc. et al.
> 800 Rene-Levesque Blvd. West
> Suite 2000
> Montreal, QC H3B 1X9
> Telephone: 1-866-246-7889
> Fax: 514-879-3992
> Email: abitibibowater@ca.ey.com
> Attention: Ms. Donna Comerford

Any such notice or other communication by a Creditor shall be deemed received only upon actual receipt thereof during normal business hours on a Business Day.

[26] **ORDERS** that any notice or other communication to be given in connection with this Order by the Canadian Petitioners or Partnerships or the Monitor to a Creditor, other than the Notice to Creditors to be published as provided in paragraph 6 herein, shall be in writing. Such notice or other communication will be sufficiently given to a Creditor if given by prepaid ordinary mail, by courier, by delivery or by facsimile transmission or electronic mail to the Creditor to such address, facsimile number or e-mail address appearing in the books and records of the Canadian Petitioners or Partnerships or in any Canadian Proof of Claim filed by the Creditor. Any such notice or other communication (a) if given by prepaid ordinary mail, shall be deemed received on the third (3rd) Business Day after mailing within Quebec, the fifth (5th) Business Day after mailing elsewhere within Canada or to the United States and the tenth (10th) Business Day after mailing internationally; (b) if given by courier or delivery, shall be deemed received on the next Business Day following dispatch; (c) if given by facsimile transmission or electronic mail before 5:00 p.m. on a Business Day, shall be deemed received on such Business Day; and (d) if given by facsimile transmission or electronic mail after 5:00 p.m. on a Business Day, shall be deemed received on the following Business Day.

[27] **ORDERS** that, in the event that the day on which any notice or communication required to be delivered pursuant to the Canadian Claims Procedure is not a Business Day, then such notice or communication shall be required to be delivered on the next Business Day.

[28] **ORDERS** that, if during any period during which notices or other communication are being given pursuant to this Order a postal strike or postal work stoppage of general application should occur, such notices or other communications then not received or deemed received shall not, absent further Order of this Court, be effective. Notices and other communications given hereunder during the course of any such postal strike or postal work stoppage of general application shall only be effective if given by electronic mail, courier, delivery or facsimile transmission in accordance with this Order.

[29] **ORDERS** that references to the singular shall include the plural, references to the plural shall include the singular and to any gender shall include the other gender.

[30] **ORDERS** that, in the event of a conflict between the French and English versions of any of the documents approved by this Order, the English version shall prevail.

[31] **REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States and the states or other subdivisions of the United States and of any other nation or state, including the U.S. Court, to assist the Canadian Petitioners and Partnerships and the Monitor and their respective agents in carrying out the terms of this Order and any other Order in these proceedings, to make such orders and to provide such assistance to the Canadian Petitioners, Partnerships and the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order and to grant representative status to the Canadian Petitioners, the Partnerships and the Monitor in any foreign proceeding.

CLÉMENT GASCON, J.S.C. J.S.C.

Me Guy P. Martel et Me Stéphanie Bergeron
STIKEMAN, ELLIOTT
Attorneys for Petitioners

Me Alain Tardif et Me Philippe H. Bélanger
McCARTHY, TÉTRAULT
Attorneys for Petitioners

Carole Lefort
Greffier adjoint

Me Avram Fishman
FLANZ FISHMAN MELAND PAQUIN
Attorneys for the Monitor

Me Patrice Benoît
GOWLING LAFLEUR HENDERSON LLP
Attorneys for Investissement Québec

TAB 7

IN THE MATTER OF the Ministerial Order under the *Environmental Protection Act* Section 99 dated November 12, 2009 issued by the Minister of Environment and Conservation to Abitibi-Consolidated Inc;

AND IN THE MATTER OF the appeal of the said Ministerial Order by Abitibi-Consolidated Inc. Under Section 107 of the *Environmental Protection Act;*

BETWEEN:

ABITIBI-CONSOLIDATED INC

APPELLANT

AND:

MINISTER OF ENVIRONMENT AND CONSERVATION

RESPONDENT

DECISION ON APPEAL
(BUCHANS MINISTERIAL ORDER)

1. On November 12, 2009 I issued an Order against you pursuant to section 99 of the *Environmental Protection Act* (the "Act"). The Order required you to:

    i) submit to the Department of Environment and Conservation for approval a detailed Remediation Action Plan by **January 15, 2010** for all sites at and adjacent to the Buchans site which have been identified in the ESA prepared by CRA as having exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG.

    ii) close all landfills identified by CRA in its ESA in accordance with provincial requirements, by **January 15, 2011**.

    iii) complete the approved site remediation actions by **January 15, 2011** or by another date as may be agreed upon with the Department of Environment and Conservation.

    iv) once the Remediation Action Plan is approved by the Department of Environment and Conservation, file with the Department, on a quarterly basis, progress reports outlining in detail the work completed on the site.

2. Accompanying the Order as required by the legislation was a Statement of Reasons for Order.

3. You filed a formal Notice of Appeal with supporting reference documents on January 11, 2010.

4. Under the Act the filing of an appeal does not affect the Order appealed from and that Order remains in force pending the outcome of the appeal.

5. No detailed Remedial Action Plan for all sites at and adjacent to the Buchans site which have been identified in the Environmental Site Assessment ("ESA") prepared by Conestoga-Rovers & Associates ("CRA") as having exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG, was received by the Department by January 15, 2010 nor to date. Neither has the Department received any applications for the necessary approvals for the work.

6. I have read your Notice of Appeal and reviewed and considered all of your arguments and the supporting documents you provided, even if I have not specifically referred to all of them in these reasons. I have considered the relevant section of the Act, reviewed the Departmental file and discussed the matter with Departmental officials.

7. Under section 107 of the Act I can dismiss the appeal, allow the appeal or make another decision or order that may be made under the Act.

8. I am dismissing the appeal. Here are my reasons for that decision.

9. In your Notice of Appeal you appealed the Ministerial Order on a number of grounds. I will set out the grounds of appeal and deal with them in turn. Please note that the fact that an argument or ground of appeal is not mentioned in these reasons does not mean that I did not consider it, or that I consider it relevant, or that I accept it.

ORDER OF THE QUEBEC SUPERIOR COURT

10. You argue that the Ministerial order is "precluded in law and has no force and effect by reason of the Order of the Quebec Superior Court dated April 17, 2009." This is a reference to the Initial Order made by The Honourable Mr. Justice Clement Gascon, J.S.C. in the CCAA hearings.

11. The Buchans Order cannot be precluded by the CCAA proceedings or by the orders made within those proceedings. In any event, neither the Initial Order, nor any other order made in the CCAA proceedings to date, precludes the Buchans Order.

12. Section 10 of the Initial Order in the CCAA proceedings imposed a stay and provided that "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..." against ACI.

However, that section of the Initial Order must be read in light of section 18, which reads:

[18] ORDERS that the Petitioners and the Partnerships shall continue to carry on their business and financial affairs, including the business and affairs of any person, firm, joint venture or corporation owned by a Petitioner or in which a Petitioner owns an interest, in a manner consistent with the commercially reasonable preservation thereof.

13. The Initial Order was amended by the Quebec Court on May 14, 2009. In that First Stay Period Extension Order the Court wrote, in part:

[5] FURTHER AMENDS the second amended Initial Order to include the following paragraph:

[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;

14. The Initial Order obligated you to carry on your business in a manner consistent with the commercially reasonable preservation thereof. Ignoring your obligations under the Act cannot be consistent with that obligation. The First Stay Period Extension Order makes it clear that the stay does not restrict the Province from, among other things, exercising rights it has under the Act to protect the environment of the Province.

15. NATURAL JUSTICE

(a) *ACI has been afforded the right to respond*

The Order I made against you was made pursuant to section 99 of the Act. The filing of this Order was your notice of my action. The Order with its Statement of Reasons sets out the basis for my action. The Environmental Assessment Report accompanying the Order provided further detail. Section 107 of the Act provides an avenue of appeal from the Order.

You have filed a Notice of Appeal consisting of nine pages of detailed argument supported by a book of Reference Documents. This Notice of Appeal clearly presents your position. I have read your Notice and supporting documents and considered your arguments carefully. The filing of your formal Notice of Appeal was your right of appeal as permitted under the Act.

Your assertion that I have failed to afford ACI the right to respond, object or make representations in respect of the matters raised is erroneous. By filing your Notice of Appeal you have responded, objected to and made representations with respect to the Order.

As is clear from the foregoing, you know the case you have to meet, and you have been afforded an opportunity to respond.

(b) *Reasons were provided*

The Buchans Order refers to the sites at Buchans which have been identified in the ESA prepared by CRA as having exceedances greater than the acceptable limits. The CRA Report details where, and for what substances, there are exceedances. It is well known that these substances can cause an adverse effect or environmental concern and the CRA Report provides ample evidence to ground the Order made.

(c) *The Buchans Order is not improperly purposed, unreasonable, nor made in bad faith*

The Buchans Order is neither improperly purposed, unreasonable nor made in bad faith. ACI was asked to provide ESA reports for the Buchans site, among others, as well as an update on the status of the remediation work at the site. You have refused to do so. Accordingly, the Province had no way to know the environmental condition of the site, and no way to know if ACI had fulfilled its obligations, requiring the Province to undertake an independent assessment. As a result of this assessment, pursuant to my obligation to protect the environment, and acting within my legislative authority under the Act, I therefore issued the Order.

The purpose of the Order is to rehabilitate the site. The Buchans site has been identified as having significant contaminants. It is not unreasonable that ACI be ordered to complete the clean up since its operations released or permitted the release of the contamination which is the subject of the Order.

16. THE ORDER WAS MADE IN THE ORDINARY COURSE

This is not "a targeted assessment" of ACI, nor an order made for a collateral purpose. ACI was asked to provide the Province with ESA reports and reports on the status of the remediation work at the Buchans site, but refused to do so. I therefore exercised the authority granted to me under the Act to issue the Order.

Section 99 of the Act gives me the authority to issue Orders. That section also provides a wide range of options as to what to include in such an Order. Each matter is considered on its own merits and, therefore, not all situations will necessitate the issuance of the same Order. The Order may vary with the circumstances. Where I believe on reasonable grounds that a person responsible has or will contravene the Act or the terms or conditions of an agreement, approval, etc. I may issue an Order. That is the ordinary course and it was followed in this instance.

17. CRA REPORT RAISES NEW ISSUES

There are no time limits on raising environmental issues and concerns. As Minister, I am expected to and I am going to respond to such issues and concerns as they are made known to my department. Concerns cannot be ignored now simply because they may have avoided detection for a number of years.

18. THE ORDER IS NOT ABOUT IMPROVING VALUE OF GOVERNMENT PROPERTY

The Order that I have made is not about improving the value of Government's own property. As you are well aware, the definition of "person responsible" in the Act includes a previous owner of a substance or thing or a person who has had care, management or control of a substance or thing. I issued the Order so that the "person responsible", in this case, ACI, would fulfil its legal obligations to remediate the contamination at the Buchans site.

19. MINISTER "FUNCTUS OFFICIO"

You have argued that I am now "functus officio" because I made a decision on July 24, 2009 to stay the Order I had issued on May 29, 2009.

The Act gives me the authority to issue the Order. Furthermore, Clause 9 of my decision to stay the Order issued on May 29, 2009 states that the stay does not prejudice my authority pursuant to the Act to issue further Orders within my jurisdiction.

I should also point out that my May 29, 2009 Order dealt specifically with the Tailings Spill Area in Buchans while the November 12, 2009 Order deals with all sites identified in the ESA prepared by CRA. Given that CRA was subsequently retained to undertake an independent environmental assessment of all ACI sites, it was prudent to stay the Order pending the collection of that information.

20. OWNERSHIP BY ACI

You assert that you are neither the legal nor the beneficial owner of the land to which the Ministerial Order pertains or to the tailings in the Buchans area. In support of that assertion you point to three instruments which you say divested you of all of your interests therein.

First, based on the definition in the Act of "person responsible", the current ownership status of ACI with respect to the Buchans site does not matter, and does not serve to relieve ACI of its environmental obligations.

Second, between at least 1991 and 2008, ACI has consistently acknowledged its responsibility with respect to the Buchans site.

In November of 1991, ASARCO and Abitibi-Price Inc., ACI's predecessor, entered into a "Environmental Compliance Schedule (Buchans Co-Tenancy)" (the "Compliance Schedule"), which is included at Tab M of your supporting documents. The other parties to the Compliance Schedule were Environment Canada and the Newfoundland Department of Environment & Lands. The Compliance Schedule refers to ASARCO and Abitibi-Price Inc., collectively, as the "owners".

Pursuant to the Compliance Schedule, ASARCO, on behalf of the Co-Tenancy, filed quarterly reports with Environment Canada and the Province, as well as periodic reports on behalf of the Buchans Co-Tenancy, on matters related to the environmental condition of the site.

In July of 2006, after ASARCO filed for bankruptcy protection in the United States, ACI submitted, to Environment Canada, and to the Department of Environment and Conservation of the Province, what was called a "Buchans Mine Action Plan Towards Environmental Compliance and Closure" (the "Action Plan").

In August of 2008, ACI wrote to the provincial Department of Environment and Conservation to indicate that Abitibi had retained AMEC Earth & Environmental ("AMEC") to conduct a Phase I ESA at the Buchans site to "identify potential areas of concern ("AOCs") posed by the past mining operations at the above-mentioned location (the "Site")". Abitibi further stated that "As part of the Phase I ESA, AMEC will also perform a preliminary risk screening of each AOC to determine the need for subsequent Phase II ESA work. The risk screening will identify if there is any potential for exposure and impact to human health and/or to the environment. The results of this screening assessment, as well as recommendations for next steps, as appropriate, will be included in a Phase I ESA report, to be submitted to NLDOEC for review and concurrence."

On December 11, 2008, this Department received from Denis LeClerc, Vice President, Sustainability and Environment of your company a letter concerning "Status of the Buchans Tailing Spill Area (TSA) Remediation Project". In that correspondence he wrote, in part:

"Scheduling of the design and planning for project implementation then became an exercise with an implementation start-up date of late spring 2009. Actual start date would be dependent on weather and spring runoff conditions. Such a start-up would also provide sufficient time to complete the capping and vegetation and allow time for the vegetation to develop before the end of the autumn growing season."

Concerning the timing for the work he wrote:

- ***"AMEC completed the design and submitted it to ACI in December 2008.***
- ***ACI to submit the proposed design to the Departments of Environment and Conservation for approval in Q1 2009; to Natural Resources for their concurrence in Q1 2009.***
- ***Requests for applicable permits to the Town of Buchans will be timed with pre-construction activities as needed.***
- ***ACI to entertain bids for implementation of the project during first half of 2009.***
- ***ACI to award the contract in time to begin the construction as planned."***

I conclude from these documents and this correspondence that at least until December, 2008, ACI accepted responsibility for remediation of the contamination released or permitted to be released by its operations, regardless of its ownership of the site and regardless of the role of another person in the operations. It is obvious as well that a detailed plan was in place to deal with the contaminants in the Tailings Spill Area. I am advised that in 2008 you carried out an extensive clean up of the Mucky Ditch in Buchans including the removal of sediment and the placing of rip rap. These actions are indicative of your view as to what rights and obligations you have with respect to the Tailing Spill Area.

21. ALLEGED INABILITY TO COMPLY DUE TO BUCHANS RIVER LTD/DR. JOHN TUACH/ATLANTIC BARITE LIMITED

You argue that Buchans River and Dr. John Tuach are the holders of exclusive rights to explore for and obtain a mining lease in the Buchans area pursuant to various Map Staked Licences. You also assert that Atlantic Barite Limited is the holder of exclusive mining rights respecting barite at Buchans pursuant to two mining leases and that to comply with the Order would require ACI to interfere with such rights and violate the *Mineral Act*.

The rights granted to the third parties mentioned above do not detract in any way from your obligation under the Act. The rights granted to these parties do not include the right to interfere with environmental remediation.

Moreover, Atlantic Barite Limited, which is a seasonal operation, is fully aware that remediation work is necessary in Buchans and that it would be carried on while they were operating. For example, in the Fall of 2008, my department wrote Atlantic Barite Limited requesting, among other things, "A statement of how ABL will accommodate Abitibi's actions to remediate the tailings pond including actions that may hinder the barite mining process." Atlantic Barite Limited verbally assured my department that they would not hinder efforts to remediate the ponds and dams.

The Province is also aware of negotiations between Buchans River Ltd and you which resulted in Buchans River Ltd agreeing that you could proceed to remediate and cap the Tailings Spill Area. I am advised that Buchans River Ltd. is now owned by Royal Roads Corp. In correspondence to the Province dated July 9, 2009 G. Will Felderhof, President and Chief Executive Officer of Royal Roads Corp. wrote, in part:

> ***In follow up to previous correspondence regarding the proposed solutions for the tailings spill in Buchans, I would like to reiterate that Royal Roads has no objections to Abitibi Bowater capping the tailings spill area.***

This letter makes it abundantly clear that Royal Roads has no difficulty with you doing whatever work is necessary to cap the Tailings Spill Area.

22. ALLEGED ERRORS IN BUCHANS MINISTERIAL ORDER

(a) *ACI is a person responsible*

Even if ACI was not an operator of the mine at Buchans, it is a "person responsible" pursuant to the *Environmental Protection Act*. "Person responsible" is defined in section 2(x) of the Act.

> (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);

The definition of "person responsible" is very broad. You are a previous owner of a substance or thing or a person who has had management or control of a substance or thing and thus would be captured within the definition of "person responsible", whether or not you are "an owner". I have not drawn a distinction between ACI or any of ACI's related companies because, in addition to the broad definition of "person responsible", which applies to ACI, section 101 of the Act provides that orders made pursuant to section 99 of the Act are binding on ACI's heirs, successors, executors, administrators, trustees, receivers, receiver managers and assigns.

(b) *ACI's obligation to remediate exists regardless of releases from Atlantic Barite Limited and the Town of Buchans*

You argue that the release complained of in the Ministerial Order is being caused in whole or in part by the activities and operations of Atlantic Barite Limited and the Town of Buchans. The Province counters that any such discharge or release would not relieve you of your obligation to remediate. Atlantic Barite Limited's operations at the tailings pond in Buchans are regulated by a Certificate of Approval issued by my Department. Atlantic Barite's operations are being monitored on a regular basis by the Department through the terms and conditions of the certificate as well as periodic inspections. Atlantic Barite Limited has an operational plan in place that includes regular inspections.

(c) *ACI's obligation to remediate exists regardless of releases from activities of Government*

On August 29, 2009, you advised the Province that during a recent tropical storm water spilled over the tops of the dams at Buchans. Overtopping of a dam may cause erosion and possible dam failure. You also advised that you would not be addressing the issue.

To avoid a possible dam failure, and a consequent release of hundreds of thousands of tons of tailings downstream, the Province decided to lower the water level in the dam and prohibit public access. On September 21, 2009 a local contractor was engaged to lower the water level and erect a gate. Without the knowledge of the Province, the contractor decided to install a culvert in the dam to lower the water level. An inspection was completed by a consultant on behalf of the Province on October 12, 2009. The consultant recommended installation of a larger culvert that would lower the water three feet below the dam crest in the tailings pond. The new culvert has now been installed. As is obvious, those were emergency repairs done to prevent a potential failure of the dam structures.

You knew that the dams could potentially fail yet you chose to do nothing. Nothing that has been done by the Province in relation to the dam structure relieves ACI from its obligations.

23. ALLEGED ERRORS IN CRA REPORT

Concerning the CRA Report which accompanied the Order, you state that the Report is severely flawed in ten particular instances. My responses to some of the issues you raise are as follows

(a) *the CRA Report fails to distinguish between lands or mineral rights previously owned by ACI and those owned, occupied or operated by third parties, erroneously attributing to ACI the fault and responsibility for all;*

The Phase I ESA details potential environmental impairment issues arising from ACI's operations. The Phase II ESA identifies actual areas of environmental impairment.

(b) *the CRA Report fails to ascertain and account for a baseline for naturally occurring levels of minerals, particularly in areas with proximity to the known former Buchans mine site where such background mineralization is to be expected naturally;*

The CRA Reports were prepared, to the extent possible, in accordance with the CSA Standards[1]. An assessment of naturally-occurring concentrations of minerals is beyond the scope of a typical Phase I or Phase II ESA.

CRA collected background soil samples for metals analyses. The concentrations of metals in the soil samples collected from the potential areas of environmental concern (PAOCs) that CRA identified were greater than the concentrations of those same metals in the background soil samples.

(c) *the CRA Report, in the absence of applicable criteria identified in the Government's regulations, apply environmental standards from the Provinces of Ontario and/or British Columbia which technically and legally do not apply and are not adapted to Newfoundland and Labrador's distinctive hydrogeological and geological characteristics;*

In the absence of CCME criteria specific to a non-potable groundwater

[1] One notable deviation from the requirements of CSA Standard Z768 is the omission of interviews with personnel familiar with the Site. ACI refused to allow its employees to discuss past operations with CRA. To the extent possible, CRA interviewed former ACI personnel.

condition, CRA compared the groundwater analytical results for metals, VOCs, PAHs, PCBs, and general chemistry to:

- Ontario Ministry of the Environment Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act, March 9, 2004 - Table 3: Full Depth Generic Site Condition Standards in a Non-Potable Ground Water Condition for "All types of property use" (MOE Non-Potable Groundwater Criteria).

The MOE Non-Potable Groundwater Criteria are generic risk-based criteria that evaluate several exposure pathways, including volatilization to indoor and ambient air, direct contact, etc. Evaluation of these pathways is important in order to be protective of human health. These criteria are frequently relied upon by the Newfoundland Department of Environment and Conservation in the absence of CCME criteria for sites with impacts to groundwater that is considered non-potable.

In the absence of applicable criteria identified in the regulations of the Province, the use of criteria from other jurisdictions in a Tier I assessment is consistent with the policies of the Newfoundland and Labrador Department of Environment and Conservation (DOEC) and represents standard practice in the Province.

(d) *the CRA Report, when comparing groundwater results to CCME surface water quality guidelines for the protection of freshwater aquatic life or marine aquatic life, as applicable, fails to take into account that these guidelines apply at the point of discharge into the receiving surface water body and not at the location of the groundwater sampling well. In so doing, the CRA Report fails to consider natural attenuation as well as faith and transportation processes occurring in the soil and groundwater before the latter actually reaches and discharges into the receiving surface water, thereby fatally and consistently identifying limit exceedances that are, in all likelihood, not real;*

CRA compared groundwater sample results to the most applicable criteria.

> As the sample locations were in close proximity to surface water, most within 150 m, CRA also compared the groundwater analytical results for BTEX/TPH, metals, VOCs, PAHs, PCBs, and general chemistry toCCME Canadian Water Quality Guidelines for the Protection of Aquatic Life Summary Table Update 7.1, December 2007 for marine environments (CCME Aquatic Life Criteria).

CRA used the CCME Aquatic Life Criteria as a screening tool to evaluate the need for an Ecological Risk Assessment for the Site.

The purpose of CRA's Phase II report was to further assess environmental liabilities of the Buchans Site by assessing the nature and extent of contamination. There were no protective barriers to prevent the direct migration of contaminated groundwater into adjacent surface water or to prevent potential contaminants from impacting the surface water.

CRA used the CCME Canadian Water Quality Guidelines for the Protection of Aquatic Life Summary Table 7.1, December 2007 as a screening tool to evaluate the need for an Ecological Risk Assessment. CRA did not use the CCME Aquatic Life Criteria to determine areas requiring remediation.

(e) *the CRA Report contains voluminous testing results from within authorized dump sites, in may cases established decades ago with Government's knowledge in compliance with existing standards. In the process, the CRA Report fails to distinguish between waste characterization date (which by its nature is expected to exceed non-applicable limits) and surrounding soil, water and groundwater data which, if it exceeded said limits, could lead to the conclusion that the waste management units sampled are potentially having an adverse effect on the environment. Further, the CRA Report fails to establish any basis to demonstrate migrations from authorized dump sites other than by reason of CRA's own investigative activities;*

Regarding groundwater and surface water data, as the landfills are considered non-containment landfills and are neither lined nor equipped with leachate collection systems, the groundwater and surface water within the footprint of the landfills is in no way confined to the landfill and any impacts identified in groundwater and surface water samples collected within the footprint of the disposal areas and landfills have the potential to migrate outside of the disposal areas and landfills. The DOEC Guidance Document entitled Environmental Standards for Closure of Non-Containment Municipal Solid Waste Landfill Sites (Landfill Guidance Document) states the following with respect to groundwater monitoring at landfill sites, the "criteria used to evaluate potential impacts shall be based on the appropriate CCME Canadian Water Quality Guidelines with consideration given to the site specific characteristics and on the groundwater use in the area."

Regarding surface water, the Landfill Guidance Document states that the "criteria used to evaluate potential impacts will be based on the appropriate Canadian Water Quality Guidelines and will be applied on a site specific basis depending on surface water use in the area." CRA used the appropriate criteria to evaluate surface water and groundwater impacts are appropriate.

CRA did not dispose of wastes in these landfills and used accepted practices to investigate them

(f) *the CRA Report presents testing results without interpretation or context sufficient to permit any assessment of actual risk or relative importance of real or potential adverse effects;*

The CRA report details evidence of discharges of substances in amounts that, in my opinion, cause or may cause an adverse effect.

(g) *the CRA Report relies, in certain instances, on false or erroneous information in respect of the sites which are targeted by the report;*

As noted in the CRA Report and consistent with CSA Standard CZ768, with respect to the Phase I ESAs, "CRA relied on information received from all parties as accurate, unless contradicted by field observations or written documentation."

(h) *the information on which the CRA Report is based was at times obtained through hazardous field sampling techniques, including drilling bore holes through likely self-contained and stable sites into groundwater below, which can contribute or cause contamination which did not previously exist; and*

CRA provided copies of its Standard Operating Procedures (SOPs) to ACI and ACI's environmental consultant, AMEC. CRA's SOPs are designed to guide CRA field staff to complete task appropriately and document the steps that CRA takes to prevent cross contamination into deeper geological units.

(i) *there is consistently no reference to, and discussion of, potential sources of sample contamination that occurred during field sampling activities, potentially leading to the identification of false or erroneous limit exceedances.*

CRA provided copies of its SOPs to ACI and ACI's environmental consultant, AMEC. CRA's SOPs document the steps that CRA takes to ensure that sample contamination does not occur. CRA validated all of the data included in the CRA Reports using standard laboratory data validation procedures. Where indications of field or laboratory sample contamination were identified, these are documented in the data tables and in the Data Validation Memoranda included in the Appendices to the CRA Reports.

24. OCCUPATIONAL HEALTH AND SAFETY ORDERS

You point out that ACI successfully appealed against Orders of the Occupational Health and Safety Division issued under the *Occupational Health and Safety Act*. The letter from the Department dated October 7, 2008 makes it clear that the appeal succeeded because the Department's investigations concluded that the mining properties at Buchans were no longer deemed to be "workplaces" as defined under the Act and not because of any of the factors as outlined in paragraph 5 of your Notice of Appeal.

25. THE ORDER IS NOT BARRED BY LIMITATIONS ACT / WAIVER / LACHES / ACQUIESCENCE

In November 1991 ASARCO and ACI entered into the Compliance Schedule. The Compliance Schedule sets out, among other things, the dates by which certain remedial actions were to be taken. ASARCO did file quarterly reports as well as other reports on the environmental condition of the site. Soon after signing the Compliance Schedule, however, the Co-Tenancy asked for extensions to the deadlines in the Compliance Schedule because the remediation work required by the Compliance Schedule had not been completed. The last request was for an extension to June 2009.

In July 2006, ACI submitted the Action Plan.

In August 2008, ACI wrote to the Department to indicate it had retained AMEC to conduct a Phase I ESA at Buchans. AMEC was also to perform a preliminary risk screening to determine the need for subsequent Phase II ESA work. The Phase I ESA and the results of the screening assessment were to be submitted by ACI to my Department.

As of January 29, 2010 none of the work or studies proposed in the Compliance Schedule, the Action Plan or the August 2008 letter have been filed with my Department.

Throughout its dealings with ACI the Province has taken steps to have ACI comply with all applicable legislation as well as the terms and conditions of its various approvals. At no time did the Province acquiesce in the deprivation of its rights.

Your final ground of appeal is based on the application of the *Limitations Act*. Specifically, you assert that the Province is statute-barred from proceeding against you because any conduct to be complained of must relate to the time period between 1928-1984 or alternatively prior to November 14, 1994 the time by which you argue you had divested yourself of all surface, mineral and tailings rights in the Tailings Spill Area.

I reject your argument. In making the Order I was exercising a power granted to me under the *Environmental Protection Act*. I was not commencing a cause of action in which judicial relief was being sought.

For all of these reasons the Appeal is dismissed.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 8th day of February, 2010.

Charlene Johnson

Charlene Johnson
Minister of the Department of
Environment and Conservation

IN THE MATTER OF the Ministerial Order under the *Environmental Protection Act* Section 99 dated November 12, 2009 issued by the Minister of Environment and Conservation to Abitibi-Consolidated Inc;

AND IN THE MATTER OF the appeal of the said Ministerial Order by Abitibi-Consolidated Inc. Under Section 107 of the *Environmental Protection Act;*

BETWEEN:

ABITIBI-CONSOLIDATED INC

APPELLANT

AND:

MINISTER OF ENVIRONMENT AND CONSERVATION

RESPONDENT

DECISION ON APPEAL
(GRAND FALLS-WINDSOR MINISTERIAL ORDER)

1. On November 12, 2009 I issued an Order against you pursuant to section 99 of the *Environmental Protection Act* (the "Act"). The Order required you to:

   i) submit to the Department of Environment and Conservation for approval a detailed Remediation Action Plan by **January 15, 2010** for all sites at Grand Falls-Windsor which have been identified in the ESA prepared by CRA as having exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG.

   ii) complete the approved remediation actions by **January 15, 2011** or by another date as may be agreed upon with the Department of Environment and Conservation.

   iii) once the Remediation Action Plan is approved by the Department of Environment and Conservation, file with the Department, on a quarterly basis, progress reports outlining in detail the work completed on the site.

iv) close all landfills associated with the pulp and paper mill operations at Grand Falls-Windsor as identified by CRA in the ESA, based on provincial requirements, by **January 15, 2011.**

2. Accompanying the Order as required by the legislation was a Statement of Reasons for Order.

3. You filed a formal Notice of Appeal with supporting reference documents on January 11, 2010.

4. Under the Act the filing of an appeal does not affect the Order appealed from and that Order remains in force pending the outcome of the appeal.

5. No detailed Remedial Action Plan for all sites at and adjacent to the Grand Falls-Windsor sites which have been identified in the Environmental Site Assessment ("ESA") prepared by Conestoga-Rovers & Associates ("CRA") as having exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG, was received by the Department by January 15, 2010 nor to date. Neither has the Department received any applications for the necessary approvals for the work.

6. I have read your Notice of Appeal and reviewed and considered all of your arguments and supporting documents, even if all of them are not specifically referred to herein. I have considered the relevant section of the Act, reviewed the Departmental file and discussed the matter with Departmental officials.

7. Under section 107 of the Act I can dismiss the appeal, allow the appeal or make another decision or order that may be made under the Act.

8. I am dismissing the appeal. Here are my reasons for that decision.

9. In your Notice of Appeal you appealed the Ministerial Order on a number of grounds. I will set out these grounds of appeal and deal with them in turn. If a particular ground of appeal or argument is not addressed, it does not mean that I did not consider it, or that I consider it relevant, or that I agree with it.

ORDER OF THE QUEBEC SUPERIOR COURT

10. You argue that the Ministerial order is "precluded in law and has no force and effect by reason of the Order of the Quebec Superior Court dated April 17, 2009." This is a reference to the Initial Order made by The Honourable Mr. Justice Clement Gascon, J.S.C. in the CCAA hearings.

11. The Grand Falls-Windsor Order cannot be precluded by the CCAA proceedings or by the orders made within those proceedings. In any event, neither the Initial

Order, nor any of the Orders issued in the CCAA proceedings to date, preclude the Grand Falls-Windsor Order.

12. Section 10 of the Initial Order in the CCAA proceedings imposed a stay and provided that "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..." against ACI.

13. However, that section of the Initial Order must be read in light of section 18 which reads:

> **[18] ORDERS that the Petitioners and the Partnerships shall continue to carry on their business and financial affairs, including the business and affairs of any person, firm, joint venture or corporation owned by a Petitioner or in which a Petitioner owns an interest, in a manner consistent with the commercially reasonable preservation thereof.**

14. The Initial Order was amended by the Quebec Court on May 14, 2009. In that First Stay Period Extension Order the Court wrote, in part:

> **[5] FURTHER AMENDS the second amended Initial Order to include the following paragraph:**
>
> **[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;**

15. The Initial Order obligated you to carry on your business in a manner consistent with the commercially reasonable preservation thereof. Ignoring your obligations under the Act cannot be consistent with that obligation. The First Stay Period Extension Order makes it clear that the stay does not restrict the Province from, among other things, exercising rights it has under the Act to protect the environment of the Province.

16. **NATURAL JUSTICE**

(a) *ACI has been afforded the right to respond*

The Order I made against you was made pursuant to section 99 of the Act. The filing of this Order was your notice of my action. The Order with its Statement of Reasons sets out the basis for my action. The Environmental Assessment Report accompanying the Order provided further detail. Section 107 of the Act provides an avenue of appeal from the Order.

You have filed a Notice of Appeal consisting of six pages of detailed argument supported by a book of Reference Documents. This Notice of Appeal clearly presents your position. I have read your Notice and supporting documents and considered your arguments carefully. The filing of your formal Notice of Appeal was your right of appeal as permitted under the Act.

Your assertion that I have failed to afford ACI the right to respond, object or make representations in respect of the matters raised is erroneous. By filing your Notice of Appeal you have responded, objected to and made representations with respect to the Order.

Based on the foregoing, ACI knows the case it has to meet, and it has been afforded the opportunity to respond.

(b) *Reasons have been provided*

The Grand Falls-Windsor Order refers to the sites at Grand Falls-Windsor which have been identified in the ESA prepared by CRA as having exceedances greater than the acceptable limits. The CRA Report details where, and for what substances, there are exceedances. It is known that these substances can cause an adverse effect or environmental concern and the CRA Report provides ample evidence to ground the Order made.

(c) *The Grand Falls-Windsor Order is not improperly purposed, unreasonable, nor made in bad faith*

The Grand Falls-Windsor Order is neither improperly purposed, unreasonable, nor made in bad faith. ACI was asked to provide ESA reports for the Grand Falls-Windsor site, among others, as well as an update on the status of the remediation work at the site. ACI has refused to do so. Accordingly, the Province had no way to know the environmental condition of the site, and no way to know if ACI had fulfilled its obligations, requiring the Province to undertake an independent assessment. As a result of that assessment, pursuant to my obligation to protect the environment, and acting within my legislative authority under the Act, I therefore issued the Order.

The purpose of the Order is to rehabilitate the site. The Grand Falls-Windsor site has been identified as having significant contaminants. It is not unreasonable that ACI be ordered to complete the clean up since its operations released or permitted the release of the contamination which is the subject of the Order. The Order is within my legislative authority under the Act.

17. THE GRAND FALLS-WINDSOR ORDER WAS MADE IN THE ORDINARY COURSE

This is not "a targeted assessment" of ACI, nor an Order made for a collateral purpose. ACI was asked to provide the Province with ESA reports and reports on the status of the remediation work at the Grand Falls-Windsor site, but refused to do so. I therefore exercised the authority granted to me under the Act to issue the Order.

Section 99 of the Act gives me the authority to issue Orders. That section also provides a wide range of options as to what to include in such an Order. Each matter is considered on its own merits and, therefore, not all situations will necessitate the issuance of the same Order. The Order may vary with the circumstances. Where I believe on reasonable grounds that a person responsible has or will contravene the Act or the terms or conditions of an agreement, approval, etc. I may issue an Order. That is the ordinary course and it was followed in this instance.

18. ALLEGATION THAT THE CRA REPORT RAISES NEW ISSUES

There are no time limits on raising environmental issues and concerns. As Minister, I am expected to and I am going to respond to such issues and concerns as they are made known to my department. Concerns cannot be ignored now simply because they may have avoided detection for a number of years.

19. THE ORDER IS NOT ABOUT IMPROVING VALUE OF GOVERNMENT PROPERTY

The Order that I have made is not about improving the value of Government's own property. As you are well aware, the definition of "person responsible" in the Act includes a previous owner of a substance or thing or a person who has had care, management or control of a substance or thing. I issued the Order so that the "person responsible", in this case, ACI, would fulfill its legal obligations to remediate the contamination at the Grand Falls-Windsor site [NTD: Sometimes, the Minister uses "site" and other times "sites"- this should be consistent.]

20. ACCC NOT ACI OPERATOR

You have argued that the Order is in error in asserting that "ACI operated and was the person responsible for a pulp and paper mill at Grand Falls-Windsor, Newfoundland and Labrador until March, 2009, and the person responsible for substances at the Grand Falls-Windsor mill", which assertion is demonstrably wrong in respect of the timeframe December 1, 2001 until Government's expropriation of the Grand Falls mill, as evidenced by Certificates of Approval issued to ACCC, wherein ACC is identified as the operator of the mill.

I reject your argument. As a former owner and/or operator, ACI remains a "person responsible" under the Act. I have not drawn a distinction between ACI, ACCC or any of ACI's related companies because, in addition to the broad definition of "person responsible", which applies to ACI, section 101 of the Act provides that orders made pursuant to section 99 of the Act are binding on ACI's heirs, successors, executors, administrators, trustees, receivers, receiver managers and assigns.

21. THE ABITIBI-CONSOLIDATED RIGHTS AND ASSETS ACT DOES NOT RELIEVE ACI OF ITS OBLIGATIONS

You have argued that pursuant to the *Abitibi-Consolidated Rights and Assets Act*, the Province is vested with all surface and real property rights in the Grand Falls-Windsor site and to comply with the Order would require ACI to interfere with such rights without right, title or authority to do so.

I reject this argument. The *Abitibi-Consolidated Rights and Assets Act* does not relieve ACI of its obligations under the Act. Section 13 of the *Abitibi-Consolidated Rights and Access Act* reads: "Nothing in this Act affects the liability of Abitibi-Consolidated related to undertakings made by it in relation to environmental remediation".

As a "person responsible", you have an obligation to respond to the Order to begin remediation work at Grand Falls-Windsor. For the avoidance of any doubt, however, the Province will not interfere with nor hinder any efforts by Abitibi to remediate the Grand Falls-Windsor sites.

22. ALLEGED ERRORS IN THE CRA REPORT

You state that the CRA Report is severely flawed in ten particular instances. My comments in response to some of the issues you have raised are set out below:

(a) the CRA Report fails to distinguish between lands operated by ACI and those operated by third parties including Abitibi-Consolidated Company of Canada, erroneously attributing to ACI the fault and responsibility for all;

The Phase I ESA details potential environmental impairment issues arising from ACI's operations. The Phase II ESA identifies actual areas of environmental impairment.

(b) CRA made no attempt to assess natural background levels of potential contaminants such as arsenic before declaring site-wide impacts from such constituents;

The purpose of CRA's Phase II report was to further assess potential areas of environmental impairment at the Grand Falls Site by assessing the nature and extent of contamination. Background concentrations of specific chemical of concern, such as arsenic were not determined for the Grand Falls Site because the assessment of natural background concentrations of potential contaminants is beyond the scope of a typical Phase II ESA. CRA completed the environmental assessment in accordance with the CSA standards.

(c) CRA has identified the future demolition of buildings and structures as an area of concern (AOC) and included this in the scope of its environmental assessment. There are currently no such activities ongoing at the Grand Falls mill and thus, no contamination occurring from such activity;

The presence and/or potential presence of contaminants within and beneath the buildings at the Grand Falls Site is an area of concern. ACI refused to allow CRA to collect samples of building materials to confirm whether building materials at the Site contained hazardous substances. CSA Standard CZ769 includes "the collection of samples of structures suspected of containing substances of concern (e.g., asbestos, urea formaldehyde, lead, radionuclides, and PCBs)." The presence of these substances of concern within a building represents a potential risk to human health.

(d) CRA has deliberately taken waste samples from within authorized landfills and compared the results to soil quality guidelines, yet not reporting their results as waste characterization data but as soil results, thereby reporting limit exceedances from within waste management units specifically created and authorized to permanently dispose of such materials and protect the surrounding environment;

Irrespective of the types of samples collected and analyzed, authorized landfills must be closed in accordance with the approval issued or, in the absence of such closure detail, the Provincial guidelines for landfill closure.

With the exception of Chicco's Landing, none of the other five landfills (that CRA identified) were constructed with proper liners. Since there were no landfill liner systems under the landfill areas to prevent contaminants from impacting the underlying native soil and the surrounding environment, contaminants within the waste and fill material disposed can move freely into the underlying native soil.

The waste criteria to which ACI refers were developed to consider the risks and hazards of a waste material when being disposed of at a lined landfill. With the absence of liners at four of ACI's five landfills, characterizing the material as waste is inappropriate and does not consider the proper risks and hazards associated with ACI's disposal practices. CRA therefore, compared the analytical results to applicable soil criteria, as the underlying and surrounding soil will be directly impacted by the contamination within the landfill.

(e) CRA has deliberately taken water samples from within authorized landfills and compared the results to surface water quality guidelines, yet not reporting their results as waste characterization data but groundwater results, thereby leading to the same erroneous conclusions as above;

The Landfill Guidance Document states that the "criteria used to evaluate potential impacts shall be based on the appropriate CCME Canadian Water Quality Guidelines with consideration given to the site specific characteristics and on the groundwater use in the area."

Regarding surface water, the Landfill Guidance Document states that the "criteria used to evaluate potential impacts will be based on the appropriate Canadian Water Quality Guidelines and will be applied on a site specific basis depending on surface water use in the area." The criteria CRA used to evaluate surface water and groundwater impacts are appropriate for the purpose stated.

(f) the CRA Report, in the absence of applicable criteria identified in the Government's regulations, apply environmental standards from the Provinces of Ontario and British Columbia which technically and legally do not apply and are not adapted to Newfoundland and Labrador's distinctive hydrogeological and geological characteristics;

In the absence of CCME criteria specific to a non-potable groundwater condition, CRA compared the groundwater analytical results for metals, VOCs, PAHs, PCBs, and general chemistry to:

- *Ontario Ministry of the Environment Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act, March 9, 2004 - Table 3: Full Depth Generic Site Condition Standards in a Non-Potable Ground Water Condition for "All types of property use" (MOE Non-Potable Groundwater Criteria).*

The MOE Non-Potable Groundwater Criteria are generic risk-based criteria that evaluate several exposure pathways, including volatilization to indoor and ambient air, direct contact, etc. Evaluation of these pathways is important in order to be protective of human health. These criteria are frequently relied upon by the Newfoundland Department of Environment and Conservation in the absence of CCME criteria for sites with impacts to groundwater that is considered non-potable.

In the absence of applicable criteria identified in the regulations of the Province, the use of criteria from other jurisdictions in a Tier I assessment is consistent with the policies of the Newfoundland and Labrador Department of Environment and Conservation (DOEC) and represents standard practice in the Province.

(g) the CRA Report, when comparing groundwater results to CCME water quality guidelines for freshwater aquatic life or marine aquatic life, as applicable, fails to take into account that these guidelines apply at the point of discharge into the receiving surface water body and not at the location of the sampling well. In so doing, the CRA Report fails to consider natural attenuation processes occurring in the soil and groundwater before the latter actually reaches and discharges into the receiving surface water, thereby fatally and consistently identifying limit exceedances that are, in all likelihood, not real;

CRA compared groundwater sample results to the most applicable criteria.

As the sample locations were in close proximity to surface water, most within 150 m, CRA also compared the groundwater analytical results for BTEX/TPH, metals, VOCs, PAHs, PCBs, and general chemistry to CCME Canadian Water Quality Guidelines for the Protection of Aquatic Life Summary Table Update 7.1, December 2007 for marine environments (CCME Aquatic Life Criteria).

CRA used the CCME Aquatic Life Criteria as a screening tool to evaluate the need for an Ecological Risk Assessment for the Site.

CRA did not use the CCME Aquatic Life Criteria to determine areas requiring remediation.

(h) the CRA Report contains voluminous testing results from within authorized dump sites, in may cases established decades ago with Government's knowledge in compliance with existing standards. In the process, the CRA Report fails to distinguish between waste characterization data (which is expected to exceed non-applicable limits) and surrounding soil, water and groundwater date which, if it exceeded said limits, could lead to the conclusion that the waste management unit sampled is potentially having an adverse effect on the environment. Further, the CRA Report fails to establish any basis to demonstrate migrations from authorized dump sites other than by reason of CRA's own investigative activities;

Regarding groundwater and surface water data, as the landfills are considered non-containment landfills and are neither lined nor equipped with leachate collection systems, the groundwater and surface water within the footprint of the landfills is in no way confined to the landfill and any impacts identified in groundwater and surface water samples collected within the footprint of the landfills have the potential to migrate outside of the landfills. The DOEC Guidance Document entitled Environmental Standards for Closure of Non-Containment Municipal Solid Waste Landfill Sites (Landfill Guidance Document) states the following with respect to groundwater monitoring at landfill sites, the "criteria used to evaluate potential impacts shall be based on the appropriate CCME Canadian Water Quality Guidelines with consideration given to the site specific characteristics and on the groundwater use in the area."

Regarding surface water, the Landfill Guidance Document states that the "criteria used to evaluate potential impacts will be based on the appropriate Canadian Water Quality Guidelines and will be applied on a site specific basis depending on surface water use in the area." Therefore, the criteria CRA used to evaluate surface water and groundwater impacts are appropriate.

CRA did not dispose of wastes in these landfills and used accepted practices to investigate them.

(i) the CRA Report presents testing results without interpretation or context sufficient to permit any assessment of actual risk or relative importance of real or potential adverse effects;

The CRA Report details evidence of the discharge of substances in amounts that, in my opinion, cause or may cause an adverse effect.

(j) the CRA Report relies, in certain instances, on false or erroneous information in respect of the sites which are targeted by the report;

As noted in the CRA Reports and consistent with CSA Standard CZ768, with respect to the Phase I ESAs, "CRA relied on information received from all parties as accurate, unless contradicted by field observations or written documentation."

ACI refused to provide CRA with any information regarding ACI's operations at the ACI sites, which may have corrected or at least identified the "false or erroneous information" upon which ACI claims that CRA relied.

(k) the information on which the CRA Report is based was at times obtained through hazardous field sampling techniques, including drilling bore holes through likely self-contained and stable sites into groundwater below, which can contribute or cause contamination which did not previously exist; and

CRA provided copies of its Standard Operating Procedures ("SOPs") to ACI and ACI's environmental consultant, AMEC Earth and Environmental ("AMEC"). CRA's SOPs are designed to guide CRA field staff to complete task appropriately and document the steps that CRA takes to prevent cross contamination into deeper geological units.

CRA installed permanent steel outer casings when installing monitoring wells through overburden into underlying bedrock. The installation of an outer casing is the industry standard practice for the prevention of contaminant migration from overlying materials into deeper, uncontaminated groundwater.

(l) there is consistently no reference to, and discussion of, potential sources of sample contamination that occurred during field sampling activities, potentially leading to the identification of false or erroneous limit exceedances.

CRA provided copies of its SOPs to ACI and AMEC. CRA's SOPs document the steps that CRA takes to ensure that sample contamination does not occur. CRA validated all of the data included in the CRA Reports using standard laboratory data validation procedures. Where indications of field or laboratory sample contamination were identified, these are documented in the data tables and in the Data Validation Memoranda included in the Appendices to the CRA Reports.

23. ACI IS A PERSON RESPONSIBLE

"Person responsible" is defined in section 2(x) of the Act.

(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);

The definition of "person responsible" is very broad. You are a previous owner of a substance or thing or a person who has had management or control of a substance or thing and thus would be captured within the definition of "person responsible", whether or not you are an "owner".

24. INAPPLICABILITY OF LIMITATIONS ACT / WAIVER / LACHES / ACQUIESCENCE

I reject your argument concerning waiver, laches or acquiescence. Throughout its dealings with ACI the Province has taken steps to have ACI comply with all applicable legislation at the Grand Falls-Windsor sites. At no time did the Province acquiesce in the deprivation of its rights.

Your final ground of appeal is based on the application of the *Limitations Act*. Specifically, you assert that the Province is statute-barred from proceeding against you because any conduct to be complained of must relate to the time period prior to November 12, 2003.

I reject your argument. In making the Order, I was exercising a power granted to me under the *Environmental Protection Act*. I was not commencing a cause of action in which judicial relief was being sought.

For all of these reasons the Appeal is dismissed.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 8th day of February, 2010.

Charlene Johnson

Charlene Johnson
Minister of the Department of
Environment and Conservation

IN THE MATTER OF the Ministerial Order under the *Environmental Protection Act* Section 99 dated November 12, 2009 issued by the Minister of Environment and Conservation to Abitibi-Consolidated Inc;

AND IN THE MATTER OF the appeal of the said Ministerial Order by Abitibi-Consolidated Inc. Under Section 107 of the *Environmental Protection Act;*

BETWEEN:

ABITIBI-CONSOLIDATED INC

APPELLANT

AND:

MINISTER OF ENVIRONMENT AND CONSERVATION

RESPONDENT

DECISION ON APPEAL
(BOTWOOD MINISTERIAL ORDER)

1. On November 12, 2009 I issued an Order against you pursuant to section 99 of the *Environmental Protection Act* (the "Act"). The Order required you to:

   i) submit to the Department of Environment and Conservation for approval a detailed Remediation Action Plan by **January 15, 2010** for all sites at Botwood which have been identified in the ESA prepared by CRA as having exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG.

   ii) complete the approved site remediation actions by **January 15, 2011** or by another date as may be agreed upon with the Department of Environment and Conservation.

   iii) once the Remediation Action Plan is approved by the Department of Environment and Conservation, file with the Department, on a quarterly basis, progress reports outlining in detail the work completed on the site.

2. Accompanying the Order as required by the legislation was a Statement of Reasons for Order.

3. You filed a formal Notice of Appeal with supporting reference documents on January 11, 2010.

4. Under the Act the filing of an appeal does not affect the Order appealed from and that Order remains in force pending the outcome of the appeal.

5. No detailed Remedial Action Plan for all sites at and adjacent to the Botwood sites which have been identified in the ESA prepared by CRA as having exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG, was received by the Department by January 15, 2010 nor to date. Neither has the Department received any applications for the necessary approvals for the work.

6. I have read your Notice of Appeal and reviewed and considered your arguments and supporting documents even if all of them are not specifically referred to herein. I have considered the relevant section of the Act, reviewed the Departmental file and discussed the matter with Departmental officials.

7. Under section 107 of the Act I can dismiss the appeal, allow the appeal or make another decision or order that may be made under the Act.

8. I am dismissing the appeal. Here are my reasons for that decision.

9. In your Notice of Appeal you appealed the Ministerial Order on a number of grounds. I will set out the grounds of appeal and deal with them in turn. If I do not specifically address a ground of appeal or an argument, it does not mean that I have not considered it, or that I consider it relevant, or that I agree with it.

ORDER OF THE QUEBEC SUPERIOR COURT

10. You argue that the Ministerial order is "precluded in law and has no force and effect by reason of the Order of the Quebec Superior Court dated April 17, 2009." This is a reference to the Initial Order made by The Honourable Mr. Justice Clement Gascon, J.S.C. in the CCAA hearings.

11. The Botwood Order cannot be precluded by the CCAA proceedings or by the Orders issued within those proceedings. In any event, neither the Initial Order, nor any order made in the CCAA proceedings to date, preclude the Botwood Order.

12. Section 10 of the Initial Order in the CCAA proceedings imposed a stay and provided that "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..." against ACI.

13. However, that section of the Initial Order must be read in light of section 18, which reads:

[18] ORDERS that the Petitioners and the Partnerships shall continue to carry on their business and financial affairs, including the business and affairs of any person, firm, joint venture or corporation owned by a Petitioner or in which a Petitioner owns an interest, in a manner consistent with the commercially reasonable preservation thereof.

14. The Initial Order was amended by the Quebec Court on May 14, 2009. In that First Stay Period Extension Order the Court wrote, in part:

[5] FURTHER AMENDS the second amended Initial Order to include the following paragraph:

[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;

15. The Initial Order obligated you to carry on your business in a manner consistent with the commercially reasonable preservation thereof. Ignoring your obligations under the Act cannot be consistent with that obligation. The First Stay Period Extension Order makes it clear that the stay does not restrict the Province from, among other things, exercising rights it has under the Act to protect the environment of the Province.

16. NATURAL JUSTICE

(a) *ACI has been afforded the right to respond*

The Order I made against you was made pursuant to section 99 of the Act. The filing of this Order was your notice of my action. The Order with its Statement of Reasons sets out the basis for my action. The Environmental Assessment Report accompanying the Order provided further detail. Section 107 of the Act provides an avenue of appeal from the Order.

You have filed a Notice of Appeal consisting of six pages of detailed arguments supported by a book of Reference Documents. This Notice of Appeal clearly presents your position. I have read your Notice and supporting documents and considered your arguments carefully. The filing of your formal Notice of Appeal was your right of appeal as permitted under the Act.

Your assertion that I have failed to afford ACI the right to respond, object or make representations in respect of the matters raised is erroneous. By filing your Notice of Appeal you have responded, objected to and made representations with respect to the Order.

It is clear from the foregoing that ACI knows the case it has to meet, and has been afforded the opportunity to respond.

(b) *Reasons have been provided*

The Botwood Order refers to the sites at Botwood which have been identified in the Environmental Site Assessment ("ESA") prepared by Conestoga-Rovers & Associates ("CRA") as having exceedances greater than the acceptable limits. The CRA Report details where, and for what substances, there are exceedances. It is known that these substances can cause an adverse effect or environmental concern and the CRA Report provides ample evidence to ground the Order made.

(c) *The Order is not improperly purposed, unreasonable, nor made in bad faith*

The Botwood Order is neither improperly purposed, unreasonable, nor made in bad faith. ACI was asked to provide ESA reports for the Botwood site, among others, as well as an update on the status of the remediation work at the site. ACI has refused to do so. Accordingly, the Province had no way to know the environmental condition of the site, and no way to know if ACI had fulfilled its obligations, requiring the Province to undertake an independent assessment. As a result of the assessment, pursuant to my obligation to protect the environment, and acting within my legislative authority under the Act, I issued the Order.

The purpose of the Order is to rehabilitate the site. The Botwood site has been identified as having significant contaminants. It is not unreasonable that ACI be ordered to complete the clean up since its operations released or permitted the release of the contamination which is the subject of the Order.

17. THE ORDER WAS MADE IN THE ORDINARY COURSE

This is not "a targeted assessment", of ACI nor was the Order made for a collateral purpose. ACI was asked to provide the Province with ESA and progress reports, but refused to do so. I therefore exercised the authority granted to me under the Act to issue the Order.

Section 99 of the Act gives me the authority to issue Orders. That section also provides a wide range of options as to what to include in such an Order. Each matter is considered on its own merits and, therefore, not all situations will necessitate the issuance of the same Order. The Order may vary with the circumstances. Where I believe on reasonable grounds that a person responsible has or will contravene the Act or the terms or conditions of an agreement, approval, etc. I may issue an Order. That is the ordinary course and it was followed in this instance.

18. ALLEGATION THAT THE CRA REPORT RAISES NEW ISSUES

There are no time limits on raising environmental issues and concerns. As Minister, I am expected to and I am going to respond to such issues and concerns as they are made known to my department. Concerns cannot be ignored now simply because they may have avoided detection for a number of years.

19. ALLEGATION THAT THIRD PARTIES CAUSED OR ARE CAUSING CONTAMINATION

ASARCO/Grand Falls Central Railway Company/Town of Botwood/Canada Post

The definition of "person responsible" in the Act is very broad and it includes an owner, a previous owner or a person who has had management or control of a substance or thing. ACI is clearly a "person responsible" and the Order was made against it for that reason. The fact that other parties may also be "persons responsible" and also subject to obligations under the Act does not relieve ACI of its obligations.

20. ALLEGATION THAT THE CRA REPORT IS FLAWED

You state that the CRA Report is severely flawed in nine particular instances. My comments in response to some of the issues you have raised are set out below:

(a) the CRA Report fails to segregate or distinguish between the ore shipping and paper/mill shipping port operations at Botwood, and erroneously combines these operations in assessing areas of concern and suggested remedial actions, erroneously attributing to ACI the fault and responsibility for all;

The CRA Report was prepared in accordance with CSA Standards Z768-01 and Z769-00. It identifies current and former properties associated with ACI's storage and shipping operations in the Town of Botwood or properties that may have been adversely impacted by those operations;

(b) the CRA Report fails to distinguish between lands owned or operated by ACI and those owned or occupied by third parties, erroneously attributing to ACI the fault and responsibility for all;

The Phase I ESA details potential environmental impairment issues arising from

ACI's operations. The Phase II ESA identifies actual areas of environmental impairment.

(c) the CRA Report, in the absence of applicable criteria identified in the Government's regulations, apply environmental standards from the Provinces of Ontario and/or British Columbia which technically and legally do not apply and are not adapted to Newfoundland and Labrador's distinctive hydrogeological and geological characteristics.

In the absence of CCME criteria specific to a non-potable groundwater condition, CRA compared the groundwater analytical results for metals, VOCs, PAHs, PCBs, and general chemistry to:

- *Ontario Ministry of the Environment Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act, March 9, 2004 - Table 3: Full Depth Generic Site Condition Standards in a Non-Potable Ground Water Condition for "All types of property use" (MOE Non-Potable Groundwater Criteria).*

The MOE Non-Potable Groundwater Criteria are generic risk-based criteria that evaluate several exposure pathways, including volatilization to indoor and ambient air, direct contact, etc. Evaluation of these pathways is important in order to be protective of human health. These criteria are frequently relied upon by the Newfoundland Department of Environment and Conservation in the absence of CCME criteria for sites with impacts to groundwater that is considered non-potable.

In the absence of applicable criteria identified in the regulations of the Province, the use of criteria from other jurisdictions in a Tier I assessment is consistent with the policies of the Newfoundland and Labrador Department of Environment and Conservation (DOEC) and represents standard practice in the Province.

(d) the CRA Report, when comparing groundwater results to CCME surface water quality guidelines for the protection of freshwater aquatic life or marine aquatic life, as applicable, fails to take into account that these guidelines apply at the point of discharge into the receiving surface water body and not at the location of the groundwater sampling well. In so doing, the CRA Report fails to consider natural attenuation as well as faith and transportation processes occurring in the soil and groundwater before the latter actually reaches and discharges into the receiving surface water, thereby fatally and consistently identifying limit exceedances that are, in all likelihood, not real;

As noted in the CRA Report,

As the sample locations were in close proximity to surface water, most within 150 m, CRA also compared the groundwater analytical results for BTEX/TPH, metals, *VOCs, PAHs, PCBs, and general chemistry to:*

- *CCME Canadian Water Quality Guidelines for the Protection of Aquatic Life Summary Table Update 7.1, December 2007 for marine environments (CCME Aquatic Life Criteria).*

CRA used the CCME Aquatic Life Criteria as a screening tool to evaluate the need for an Ecological Risk Assessment for the Site.

CRA did not use the CCME Aquatic Life Criteria to determine areas requiring remediation.

(e) the CRA Report presents testing results without interpretation or context sufficient to permit any assessment of actual risk or relative importance of real or potential adverse effects;

The CRA Report details evidence of discharges of substances in amounts that, in my opinion, cause or may cause an adverse effect.

(f) the CRA Report relies, in certain instances, on false or erroneous information in respect of the sites which are targeted by the report;

As noted in the CRA Report, with respect to the Phase I ESAs, "CRA relied on information received from all parties as accurate, unless contradicted by field observations or written documentation." ACI refused to provide CRA with any information regarding ACI's operations at the ACI Sites which may have corrected or identified the "false or erroneous information" upon which ACI claims that CRA relied.

(g) the information on which the CRA Report is based was at times obtained through hazardous field sampling techniques, including drilling bore holes through likely self-contained and stable sites into groundwater below, which can contribute or cause contamination which did not previously exist; and

CRA provided copies of its Standard Operating Procedures ("SOPs") to ACI and ACI's environmental consultant, AMEC Earth and Environmental ("AMEC"). CRA's SOPs are designed to guide CRA field staff to complete tasks appropriately and document the steps that CRA takes to prevent cross contamination into deeper geological units.

(h) there is consistently no reference to, and discussion of, potential sources of sample contamination that occurred during field sampling activities, potentially leading to the identification of false or erroneous limit exceedances.

CRA provided copies of its SOPs to ACI and AMEC. CRA's SOPs document the steps that CRA takes to ensure that sample contamination does not occur. CRA *validated the data included in the CRA Reports using standard data validation procedures. Where indications of field or laboratory sample contamination were identified, these are documented in the data tables and in the Data Validation Memoranda included in the Appendices to the CRA Reports.*

21. **ACI IS A PERSON RESPONSIBLE**

"Person responsible" is defined in section 2(x) of the Act.

(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);

The definition of "person responsible" is very broad. You are a previous owner of a substance or thing or a person who has had management or control of a substance or thing and thus would be captured within the definition of "person responsible", whether or not you are an "owner". I have not drawn a distinction between ACI or any of ACI's related companies because, in addition to the broad definition of "person responsible", which applies to ACI, section 101 of the Act provides that orders made pursuant to section 99 of the Act are binding on ACI's heirs, successors, executors, administrators, trustees, receivers, receiver managers and assigns.

In addition, while you deny that ACI is a "person responsible", I note that by correspondence dated December 16, 2007 to my Department, ACI advised that, in 2006, a Phase I ESA was conducted by Jacques Whitford on behalf of ACI on the "Former Railway Line, Botwood to Grand Falls" the "Botwood site" and the "Caustic Storage Tank". In 2007, a Phase II Environmental Site Assessment was conducted on the rail line and the Botwood site. The correspondence concludes:

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These projects were conducted and the results are under review to assist in the development of a long term operational plan to minimize any potential impacts that may exist. ACCGF will use the information collected to assist in planning of these sites for any required decommissioning or restoration if needed. ACCGF will update you of any changes, programs or activities we wish to undertake in these areas.

22. INAPPLICABILITY OF LIMITATIONS ACT / WAIVER / LACHES / ACQUIESCENCE

I reject your argument concerning waiver, laches or acquiescence. Throughout its dealings with ACI, the Province has taken steps to have ACI comply with all applicable legislation at the Botwood site. At no time did the Province acquiesce in the deprivation of its rights.

Your final ground of appeal is based on the application of the *Limitations Act*. Specifically, you assert that the Province is statute-barred from proceeding against you because any conduct to be complained of must relate to the time period prior to November 12, 2003.

I reject your argument. In making the Order, I was exercising a power granted to me under the *Environmental Protection Act*. I was not commencing a cause of action in which judicial relief was being sought.

For all of these reasons the Appeal is dismissed.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 8th day of February, 2010.

Charlene Johnson

Charlene Johnson
Minister of the Department of
Environment and Conservation

IN THE MATTER OF the Ministerial Order under the *Environmental Protection Act* Section 99 dated November 12, 2009 issued by the Minister of Environment and Conservation to Abitibi-Consolidated Inc;

AND IN THE MATTER OF the appeal of the said Ministerial Order by Abitibi-Consolidated Inc. Under Section 107 of the *Environmental Protection Act;*

BETWEEN:

ABITIBI-CONSOLIDATED INC

APPELLANT

AND:

MINISTER OF ENVIRONMENT AND CONSERVATION

RESPONDENT

DECISION ON APPEAL
(STEPHENVILLE MINISTERIAL ORDER)

1. On November 12, 2009 I issued an Order against you pursuant to section 99 of the *Environmental Protection Act* (the "Act"). The Order required you to:

   i) submit to the Department of Environment and Conservation for approval a detailed Remediation Action Plan by **January 15, 2010** for all sites on or adjacent to the pulp and paper mill operations at Stephenville property which have been identified in the ESA prepared by CRA as having exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG.

   ii) complete the approved site remediation actions by **January 15, 2011** or by another date as may be agreed upon with the Department of Environment and Conservation.

   iii) once the Remediation Action Plan is approved by the Department of Environment and Conservation, file with the Department, on a quarterly basis, progress reports outlining in detail the work completed on the site.

iv) close all landfills and lagoons/impoundments associated with the pulp and paper mill operations at Stephenville as identified by CRA in the ESA, based on provincial requirements, by **January 15, 2011.**

2. Accompanying the Order as required by the legislation was a Statement of Reasons for Order.

3. You filed a formal Notice of Appeal with supporting reference documents on January 11, 2010.

4. Under the Act the filing of an appeal does not affect the Order appealed from and that Order remains in force pending the outcome of the appeal.

5. No detailed Remedial Action Plan for all sites at and adjacent to the Stephenville sites which have been identified in the Environmental Site Assessment ("ESA") prepared by Conestoga-Rovers & Associates ("CRA") as having exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG, was received by the Department by January 15, 2010 nor to date. Neither has the Department received any applications for the necessary approvals for the work.

6. I have read your Notice of Appeal and reviewed and considered the supporting documents and all of your arguments, even if I have not specifically referred to all of them herein. I have considered the relevant section of the Act, reviewed the Departmental file and discussed the matter with Departmental officials.

7. Under section 107 of the Act I can dismiss the appeal, allow the appeal or make another decision or order that may be made under the Act.

8. I am dismissing the appeal. Here are my reasons for that decision.

9. In your Notice of Appeal you appealed the Ministerial Order on a number of grounds. I will set out each ground of appeal and deal with each in turn. If a specific document or argument is not specifically referred to herein, it does not mean that I have not considered it, or that I consider it relevant, or that I agree with it.

ORDER OF THE QUEBEC SUPERIOR COURT

10. You argue that the Ministerial order is "precluded in law and has no force and effect by reason of the Order of the Quebec Superior Court dated April 17, 2009." This is a reference to the Initial Order made by The Honourable Mr. Justice Clement Gascon, J.S.C. in the CCAA hearings.

11. The Stephenville Order cannot be precluded by the CCAA proceedings or the orders made within those proceedings. In any event, neither the Initial Order, nor

any of the orders made to date in the CCAA proceedings, preclude the Stephenville Order.

Section 10 of the Initial Order in the CCAA proceedings imposed a stay and provided that "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..." against ACI. However, that section of the Initial Order must be read in light of section 18 which reads:

[18] ORDERS that the Petitioners and the Partnerships shall continue to carry on their business and financial affairs, including the business and affairs of any person, firm, joint venture or corporation owned by a Petitioner or in which a Petitioner owns an interest, in a manner consistent with the commercially reasonable preservation thereof.

12. The Initial Order was amended by the Quebec Court on May 14, 2009. In that First Stay Period Extension Order the Court wrote, in part:

[5] FURTHER AMENDS the second amended Initial Order to include the following paragraph:

[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;

13. The Initial Order obligated you to carry on your business in a manner consistent with the commercially reasonable preservation thereof. Ignoring your obligations under the Act cannot be consistent with that obligation. The First Stay Period Extension Order makes it clear that the stay does not restrict the Province from, among other things, exercising rights it has under the Act to protect the environment of the Province.

14. **NATURAL JUSTICE**

(a) *ACI has been afforded the right to respond*

The Order I made against you was made pursuant to section 99 of the Act. The filing of this Order was your notice of my action. The Order with its Statement of Reasons sets out the basis for my action. The Environmental Assessment Report accompanying the Order provided further detail. Section 107 of the Act provides an avenue of appeal from the Order.

You have filed a Notice of Appeal consisting of seven pages of detailed argument supported by a book of Reference Documents. This Notice of Appeal clearly presents your position. I have read your Notice and supporting documents and considered your arguments carefully. The filing of your formal Notice of Appeal was your right of appeal as permitted under the Act.

Your assertion that I have failed to afford ACI the right to respond, object or make representations in respect of the matters raised is erroneous. By filing your Notice of Appeal you have responded, objected to and made representations with respect to the Order.

Based on the foregoing, you know the case you have to meet, and you have been afforded the right to be heard.

(b) *Reasons have been provided*

The Stephenville Order refers to the sites at Stephenville which have been identified in the ESA prepared by CRA as having exceedances greater than the acceptable limits. The CRA Report details where, and for what substances, there are exceedances. It is known that these substances can cause an adverse effect or environmental concern and the CRA Report provides ample evidence to ground the Order made.

(c) *The Order is not improperly purposed, unreasonable, nor made in bad faith*

The Stephenville Order is neither improperly purposed, unreasonable nor made in bad faith.

The purpose of the Order is to rehabilitate the site. The Stephenville site has been identified as having significant contaminants. It is not unreasonable that ACI be ordered to complete the clean up since its operations released or permitted the release of the contamination which is the subject of the Order.

15. **STEPHENVILLE DECOMMISSIONING**

The Province did receive an Environmental Assessment Registration entitled "Stephenville Paper Mill Site Decommissioning" dated July 28, 2006. The document set out the steps ACI intended to take to decommission the site. These steps included: finalizing a Phase I ESA, conducting a Phase II ESA and developing a Remedial Action Plan (RAP). The decommissioning plan also states: "Following the completion of the Phase II ESA, a comprehensive RAP will be developed and submitted to DOEC." Decommissioning of the site was set to begin in 2006 and tentatively scheduled to be completed by 2008. The decommissioning plan also includes the statement: "ACCC will address and manage the environmental contaminants that are present on the site due to the occupation of Abitibi-Price Inc. or Labrador Linerboard Ltd."

Based on the promises made in the Stephenville Paper Mill Site Decommissioning Plan, the Province released the undertaking from further environmental assessment on October 6, 2006. ACI did submit a Phase I report and demolished a portion of the infrastructure.

However, despite the promises made in the Decommissioning Plan, no Phase II ESA nor Remedial Action Plan have ever been filed with the Province. Accordingly, the Province had no way to know if ACI had fulfilled its obligations. As a result, the Province had to undertake an independent assessment. Given the results of that assessment, pursuant to my obligation to protect the environment, and acting within my legislative authority under the Act, I issued the Order.

16. ALLEGATION THAT THE CRA REPORT RAISES NEW ISSUES

There are no time limits on raising environmental issues and concerns. As Minister, I am expected to and I am going to respond to such issues and concerns as they are made known to my department. Concerns cannot be ignored now simply because they may have avoided detection for a number of years.

17. ACI IS A PERSON RESPONSIBLE

"Person responsible" is defined in section 2(x) of the Act.

(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);

The definition of "person responsible" is very broad. You are a previous owner of a substance or thing or a person who has had management or control of a substance or thing and thus would be captured within the definition of "person responsible", whether or not you are an "owner". I have not drawn a distinction between ACI, ACCC or any of ACI's related companies because, in addition to the broad definition of "person responsible", which applies to ACI, section 101 of the Act provides that orders made pursuant to section 99 of the Act are binding on ACI's heirs, successors, executors, administrators, trustees, receivers, receiver managers and assigns.

In addition, ACI has continued to exercise control over the Stephenville Mill site. CRA was only permitted on the site after weeks of negotiations with ACI and then only after an access agreement was reached. CRA had to obtain ACI's permission each time to access the sites at Stephenville. ACI and AMEC personnel also accompanied CRA personnel when they were completing their assessment work. ACI's control over the Stephenville sites is also demonstrated by the fences around the site and presence of security personnel.

18. ALLEGATION THAT THIRD PARTIES ARE RESPONSIBLE FOR CONTAMINATION

ACI cannot shirk its responsibilities simply by stating that the United States Air Force or Labrador Linerboard Limited may have contaminated the Stephenville site as well. The possibility of third party contamination does not relieve ACI of its obligations under the Act. The third parties are also subject to the Act. ACI confirmed its understanding of its obligation and its undertaking to remediate contamination when it stated, in its Stephenville Paper Mill Site Decommissioning Plan submitted to my department: **"ACCC will address and manage the environmental contaminants that are present on the site due to the occupation of Abitibi-Price Inc. or Labrador Linerboard Ltd."**

19. ALLEGED ERRORS IN CRA REPORT

You state that the CRA Report is severely flawed in a number of particular instances. What follows are my comments (presented in italics) on some of the issues you have raised:

(a) the CRA Report fails to distinguish between lands owned or operated by ACI and those owned or occupied by third parties, including Abitibi-Consolidated

Company of Canada, erroneously attributing to ACI the fault and responsibility for all;

The Phase I ESA details potential environmental impairment issues arising from ACI's operations. The Phase II ESA identifies actual areas of environmental impairment.

(b) the CRA Report, in the absence of applicable criteria identified in the Government's regulations, apply environmental standards from the Provinces of Ontario and/or British Columbia which technically and legally do not apply and are not adapted to Newfoundland and Labrador's distinctive hydrogeological and geological characteristics;

In the absence of CCME criteria specific to a non-potable groundwater condition, CRA compared the groundwater analytical results for metals, VOCs, PAHs, PCBs, and general chemistry to Ontario Ministry of the Environment Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act, March 9, 2004 - Table 3: Full Depth Generic Site Condition Standards in a Non-Potable Ground Water Condition for "All types of property use" (MOE Non-Potable Groundwater Criteria).

The MOE Non-Potable Groundwater Criteria are generic risk-based criteria that evaluate several exposure pathways, including volatilization to indoor and ambient air, direct contact, etc. Evaluation of these pathways is important in order to be protective of human health. These criteria are frequently relied upon by the Newfoundland Department of Environment and Conservation in the absence of CCME criteria for sites with impacts to groundwater that is considered non-potable.

In the absence of applicable criteria identified in the regulations of the Province, the use of criteria from other jurisdictions in a Tier I assessment is consistent with the policies of the Newfoundland and Labrador Department of Environment and Conservation (DOEC) and represents standard practice in the Province.

(c) the CRA Report, when comparing groundwater results to CCME surface water quality guidelines for the protection of freshwater aquatic life or marine aquatic life, as applicable, fails to take into account that these guidelines apply at the point of discharge into the receiving surface water body and not at the location of the groundwater sampling well. In so doing, the CRA Report fails to consider natural attenuation as well as faith and transportation processes occurring in the soil and groundwater before the latter actually reaches and discharges into the receiving surface water, thereby fatally and consistently identifying limit exceedances that are, in all likelihood, not real;

As noted in the CRA Report,

As the sample locations were in close proximity to surface water, most within 150 m, CRA also compared the groundwater analytical results for BTEX/TPH, metals, VOCs, PAHs, PCBs, and general chemistry to:

- *CCME Canadian Water Quality Guidelines for the Protection of Aquatic Life Summary Table Update 7.1, December 2007 for marine environments (CCME Aquatic Life Criteria).*

  CRA used the CCME Aquatic Life Criteria as a screening tool to evaluate the need for an Ecological Risk Assessment for the Site.

CRA used the CCME Canadian Water Quality Guidelines for the Protection of Aquatic Life Summary Table 7.1, December 2007 as a screening tool to evaluate the need for an Ecological Risk Assessment. CRA did not use the CCME Aquatic Life Criteria to determine areas requiring remediation.

(d) the CRA Report contains testing results from within authorized dump sites, in may [sic] cases established decades ago with Government's knowledge in compliance with existing standards. In the process, the CRA Report fails to distinguish between waste characterization data (which by its nature is expected to exceed non-applicable limits) and surrounding soil, water and groundwater data which, if it exceeded said limits, could lead to the conclusion that the waste management units sampled are potentially having an adverse effect on the environment. Further, the CRA Report fails to establish any basis to demonstrate migrations from authorized dump sites other than by reason of CRA's own investigative activities;

Regarding groundwater and surface water data, as the landfills are considered non-containment landfills and are neither lined nor equipped with leachate collection systems, the groundwater and surface water within the footprint of the landfills is in no way confined to the landfill and any impacts identified in groundwater and surface water samples collected within the footprint of the landfills have the potential to migrate outside of the landfills. The DOEC Guidance Document entitled Environmental Standards for Closure of Non-Containment Municipal Solid Waste Landfill Sites (Landfill Guidance Document) states the following with respect to groundwater monitoring at landfill sites, the "...criteria used to evaluate potential impacts shall be based on the appropriate CCME Canadian Water Quality Guidelines with consideration given to the site specific characteristics and on the groundwater use in the area."

Regarding surface water, the Landfill Guidance Document states that the "criteria used to evaluate potential impacts will be based on the appropriate Canadian Water Quality Guidelines and will be applied on a site specific basis depending on surface water use in the area." CRA used the appropriate criteria to evaluate surface water and groundwater impacts.

(e) the CRA Report fails to ascertain and account for a baseline for naturally occurring levels of minerals in soil and groundwater; and

As noted previously, the CRA Reports were prepared, to the extent possible, in accordance with the CSA Standards[1]. *An assessment of naturally-occurring concentrations of minerals is beyond the scope of a typical Phase I or Phase II ESA.*

(f) the CRA Report presents testing results without interpretation or context sufficient to permit any assessment of actual risk or relative importance of real or potential adverse effects.

The CRA Report details evidence of discharges of substances in amounts that, in my opinion, cause or may cause an adverse effect.

20. LIMITATIONS ACT

Your final ground of appeal is based on the application of the *Limitations Act*. Specifically, you assert that the Province is statute-barred from proceeding against you because any conduct to be complained of must relate to the time period prior to November 12, 2003.

I reject your argument. In making the Order, I was exercising a power granted to me under the *Environmental Protection Act*. I was not commencing a cause of action in which judicial relief was being sought.

For all of these reasons the Appeal is dismissed.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 8th day of February, 2010.

Charlene Johnson

Charlene Johnson
Minister of the Department of
Environment and Conservation

[1] One notable deviation from the requirements of CSA Standard Z768 is the omission of interviews with personnel familiar with the Site. ACI refused to allow its employees to discuss past operations with CRA. To the extent possible, CRA interviewed former ACI personnel.

IN THE MATTER OF the Ministerial Order under the *Environmental Protection Act* Section 99 dated November 12, 2009 issued by the Minister of Environment and Conservation to Abitibi-Consolidated Inc;

AND IN THE MATTER OF the appeal of the said Ministerial Order by Abitibi-Consolidated Inc. Under Section 107 of the *Environmental Protection Act;*

BETWEEN:

ABITIBI-CONSOLIDATED INC

APPELLANT

AND:

MINISTER OF ENVIRONMENT AND CONSERVATION

RESPONDENT

DECISION ON APPEAL (LOGGING CAMPS MINISTERIAL ORDER)

1. On November 12, 2009 I issued an Order against you pursuant to section 99 of the *Environmental Protection Act* (the "Act"). The Order required you to:

   i) submit to the Department of Environment and Conservation for approval a detailed Remediation Action Plan by **January 15, 2010** for all logging camp sites, including adjacent property, which have been identified in the ESA prepared by CRA as having or likely to have exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG, including the closure of all landfills in accordance with provincial requirements and the demolition of all structures on the logging camp sites.

   ii) complete the approved site remediation actions by **January 15, 2011** or by another date as may be agreed upon with the Department of Environment and Conservation.

   iii) once the Remediation Action Plan is approved by the Department of Environment and Conservation, file with the Department, on a quarterly basis, progress reports outlining in detail the work completed on the sites.

2. Accompanying the Order as required by the legislation was a Statement of Reasons for Order.

3. You filed a formal Notice of Appeal with supporting reference documents on January 11, 2010.

4. Under the Act the filing of an appeal does not affect the Order appealed from and that Order remains in force pending the outcome of the appeal.

5. No detailed Remedial Action Plan for all sites at and adjacent to the logging camps which have been identified in the Environmental Site Assessment ("ESA") prepared by Conestoga-Rovers & Associates ("CRA") as having exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG, was received by the Department by January 15, 2010 nor to date. Neither has the Department received any applications for the necessary approvals for the work.

6. I have read your Notice of Appeal and reviewed and considered your arguments and supporting documents, even if I have not specifically referred to them herein. I have considered the relevant section of the Act, reviewed the Departmental file and discussed the matter with Departmental officials.

7. Under section 107 of the Act I can dismiss the appeal, allow the appeal or make another decision or order that may be made under the Act.

8. I am dismissing the appeal. Here are my reasons for that decision.

9. In your Notice of Appeal you appealed the Ministerial Order on a number of grounds. I will set out these grounds of appeal and deal with them in turn. If I do not address a particular ground or argument, it does not mean that I have not considered it, or that I consider it relevant, or that I agree with it.

ORDER OF THE QUEBEC SUPERIOR COURT

10. You argue that the Ministerial order is "precluded in law and has no force and effect by reason of the Order of the Quebec Superior Court dated April 17, 2009." This is a reference to the Initial Order made by The Honourable Mr. Justice Clement Gascon, J.S.C. in the CCAA hearings.

11. The Logging Camps Order cannot be precluded by the CCAA proceedings or the orders made within those proceedings. In any event, neither the Initial Order, nor any of the Orders issued in the CCAA proceedings to date, preclude the Logging Camps Order.

12. Section 10 of the Initial Order in the CCAA proceedings imposed a stay and provided that "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..." against ACI. However, that section of the Initial Order must be read in light of section 18 which reads:

[18] ORDERS that the Petitioners and the Partnerships shall continue to carry on their business and financial affairs, including the business and affairs of any person, firm, joint venture or corporation owned by a Petitioner or in which a Petitioner owns an interest, in a manner consistent with the commercially reasonable preservation thereof.

13. The Initial Order was amended by the Quebec Court on May 14, 2009. IN that First Stay Period Extension Order the Court wrote, in part:

[5] FURTHER AMENDS the second amended Initial Order to include the following paragraph:

[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;

14. The Initial Order obligated you to carry on your business in a manner consistent with the commercially reasonable preservation thereof. Ignoring your obligations under the Act cannot be consistent with that obligation. The First Stay Period Extension Order makes it clear that the stay does not restrict the Province from, among other things, exercising rights it has under the Act to protect the environment of the Province.

15. **NATURAL JUSTICE**

(a) *ACI has been afforded the right to respond*

The Order I made against you was made pursuant to section 99 of the Act. The filing of this Order was your notice of my action. The Order with its Statement of Reasons sets out the basis for my action. The Environmental Assessment Report accompanying the Order provided further detail. Section 107 of the Act provides an avenue of appeal from the Order.

You have filed a Notice of Appeal consisting of eight pages of detailed argument supported by a book of Reference Documents. This Notice of Appeal clearly presents your position. I have read your Notice and supporting documents and considered your arguments carefully. The filing of your formal Notice of Appeal was your right of appeal as permitted under the Act.

Your assertion that I have failed to afford ACI the right to respond, object or make representations in respect of the matters raised is erroneous. By filing your Notice of Appeal you have responded, objected to and made representations with respect to the Order.

Based on the foregoing, ACI knows the case it has to meet, and has been afforded the opportunity to respond.

(b) *Reasons have been provided*

The Logging Camps Order refers to the sites which have been identified in the ESA prepared by CRA as having exceedances greater than the acceptable limits. The CRA Report details where, and for what substances, there are exceedances. It is known that these substances can cause an adverse effect or environmental concern and the CRA Report provides ample evidence to ground the Order made.

(c) *The Logging Camps Order is not improperly purposed, unreasonable, nor made in bad faith*

The Logging Camps Order is neither improperly purposed, unreasonable nor made in bad faith. ACI was asked to provide ESA reports for the Logging Camp sites, among others, as well as an update on the status of the remediation work at the sites. You have said that there are no ESA or other reports on the environmental condition of the Logging Camps sites. Accordingly, the Province had no way to know the environmental condition of the sites, and no way to know if ACI had fulfilled its obligations, requiring the Province to undertake an independent assessment. As a result of this assessment, pursuant to my obligation to protect the environment, and acting within my legislative authority under the Act, I therefore issued the Order.

The purpose of the Order is to rehabilitate the sites. The Logging Camp sites have been identified as having significant contaminants. It is not unreasonable that ACI be ordered to complete the clean up since its operations released or permitted the release of the contamination which is the subject of the Order.

16. THE ORDER WAS MADE IN THE ORDINARY COURSE

This is not "a targeted assessment" of ACI, nor an order made for a collateral purpose. ACI was asked to provide the Province with ESA and progress reports for the Logging Camps sites, but refused to do so. I therefore exercised the authority granted to me under the Act to issue the Order.

Section 99 of the Act gives me the authority to issue Orders. That section also provides a wide range of options as to what to include in such an Order. Each matter is considered on its own merits and, therefore, not all situations will necessitate the issuance of the same Order. The Order may vary with the circumstances. Where I believe on reasonable grounds that a person responsible has or will contravene the Act or the terms or conditions of an agreement, approval, etc. I may issue an Order. That is the ordinary course and it was followed in this instance.

17. **ALLEGATION THAT THE CRA REPORT RAISES NEW ISSUES**

There are no time limits on raising environmental issues and concerns. As Minister, I am expected to and I am going to respond to such issues and concerns as they are made known to my department. Concerns cannot be ignored now simply because they may have avoided detection for a number of years.

18. **THE ORDER IS NOT ABOUT IMPROVING VALUE OF GOVERNMENT PROPERTY**

The Order that I have made is not about improving the value of Government's own property. As you are well aware, the definition of "person responsible" in the Act includes a previous owner of a substance or thing or a person who has had care, management or control of a substance or thing. I issued the Order so that the "person responsible", in this case. ACI, would fulfil its legal obligations to remediate the contamination at the Logging Camps sites.

19. **THE ABITIBI-CONSOLIDATED RIGHTS AND ASSETS ACT DOES NOT RELIEVE ACI OF ITS OBLIGATIONS**

You have argued that pursuant to the *Abitibi-Consolidated Rights and Assets Act,* the Province is vested with all surface and real property rights in the Logging Camps sites and to comply with the Order would require ACI to interfere with such rights without right, title or authority to do so.

I reject this argument. The *Abitibi-Consolidated Rights and Assets Act* does not relieve ACI of its obligations under the Act. Section 13 of the *Abitibi-Consolidated Rights and Access Act* reads: "Nothing in this Act affects the liability of Abitibi-Consolidated related to undertakings made by it in relation to environmental remediation".

As a "person responsible", you have an obligation to respond to the Order to begin remediation work at the Logging Camps sites. For the avoidance of any doubt, however, the Province will not interfere with nor hinder any efforts by Abitibi to remediate the Logging Camps sites.

20. **ACCC NOT ACI OPERATOR**

You have argued that it is apparent that ACI has not been the operator of the Logging Camps sites since at least 2001, by reference to the ACCC Certificates of Approval (included as tab N of your supporting documents), wherein ACCC is referred to as the operator of the Grand Falls-Windsor and Stephenville mills.

I reject your argument. The Act, at section 101, proves that orders made pursuant to section 99 are bindings on heirs, successors, executors, administrators, trustees, receivers, receiver managers and assigns of the person to whom it is directed. In any event, ACI, as a former owner and/or operator, remains a "person responsible" under the Act. Accordingly, I have not drawn a distinction between ACI, ACCC, or any of ACI's related companies in making the Order.

21. **ALLEGED ERRORS IN CRA REPORT**

Concerning the CRA Report which accompanied the Order you state that the Report is severely flawed in a number of particular instances. My comments (presented in italics) in response to some of the issues you have raised are as follows:

(a) the Logging Camps Ministerial Order asserts that ACI "operated approximately fifty logging camps in central Newfoundland and Labrador ... until March, 2009 and was the person responsible for these logging camps and the substances thereon", which assertion is demonstrably wrong for the following reasons:

(ii) the Logging Camps Ministerial Order incorrectly identifies fifty (50) logging camps as requiring remediation, whereas it is the opinion of ACI, supported by work undertaken by ACI's environmental consultants, AMEC Earth & Environmental, Inc. that the correct number of logging camps supporting Abitibi-Consolidated Company of Canada's former pulp and paper mill operations is actually more accurately thirty-two (32) logging camps. Specific examples of sites incorrectly identified by CRA as logging camps are as follows:

(A) CRA's suggested Flatwater Pond Camp was never a logging camp associated with ACI or Abitibi-Consolidated Company of Canada; it was operated by the predecessor company to the current operator of the Corner Brook pulp and paper mill;

(B) the suggested Pats Pond and Northwest Gander camps were transferred to independent third parties several years ago;

(C) the suggested Bomey Lake camp had been "squatted" upon for several years and used for nearby quarry operations (over the years, the quarry was operated by Cabot Granite, International

Granite, and Central Holdings Inc.); and

(D) CRA's suggested Exploits Dam logging camp was never a logging camp site but was rather part of the Millertown dam/hydro facility;

(b) in the CRA Report, CRA identified twenty-two (22) locations that pre-date mechanization and were thus used for various light, non-industrial activities, including temporary tent camps or scale offices, and it is ACI's assessment, supported by AMEC's opinion, that potential environmental risks associated with these locations, if any, would be minimal or immaterial;

(c) the Logging Camps Ministerial Order asserts that ACI is the person responsible for the release of substances into the environment in an amount which in the Minister's opinion causes an adverse effect, which assertion is demonstrably erroneous; as the Minister knows or ought to know, the releases complained of in the Logging Camps Ministerial Order and in the CRA Report referenced in the Logging Camps Ministerial Order were and are being caused in whole or in part by the activities and operations of third parties, as follows:

(i) a significant deficiency in the CRA Report is its failure to segregate third party activities from those which have resulted from true logging camp activities of Abitibi-Consolidated Company of Canada and its predecessors, many such former logging camp sites have, after dismantling and clean up, been used or occupied for other purposes by third parties, including seasonal fishing camps, snowmobile camps, cottages and other similar activities. Soil and other samples were taken by CRA at only six (6) such locations with no method of distinguishing whether results obtained were attributable to such subsequent activities or to the operation of the original logging camps, and because of this, in issuing the Logging Camps Ministerial Order based on the CRA Report, the Minister has no reasonable basis upon which to determine the degree, if any, to which ACI (even if it, contrary to the above submissions, was an operator of such camps) was a "person responsible";

(ii) the vast majority of the thirty-two (32) logging camps of which ACI is aware were closed well prior to March 2009, and in no cases were there prior reported environmental conditions, infractions or concerns, strongly suggesting that any of the substances released into the environment which are complained of in the Logging Camps Ministerial Order as "substances thereon" are the responsibility of third parties, and not of ACI or Abitibi-Consolidated Company of Canada;

(iii) the CRA Report specifically confirms, based on tis [sic] enquiries of the Department of Environment and Conservation ("DOEC") that there exist no past or pending environmental investigations or infractions pertaining to the Logging Camps;

(iv) the CRA Report identifies an area of concern, the former garage at the Rocky Brook Camp (ACI believes the user of this site to be the "Exploits Valley Snowmobile Association"); it is believed that that [sic] this third party group operates a recreational and commercial snowmobile service at the site, including a shelter that serves as a garage for storage, fuelling and repairing of snowmobiles and related equipment, all of which are likely sources of the Rocky Brook Camp contaminants complained of;

(v) the CRA Report identifies a number of former logging camps (i.e. Pamehoc Lake, Rocky Brook, Miguels Lake and Lake Ambose) as having private cabins located on site, all of which private cabins are likely sources of third party contaminants;

(vi) the lack of objectivity and targeted nature of the Logging Camps Ministerial Order and the CRA Report is best illustrated by reference to the Lake Ambrose logging camp discussed at section 2.2.3 of the Logging Camps Report. After noting earlier in the CRA Report that chainsaws and motorized vehicles (other than tractors used for wood hauling) were not used in the logging operations of ACI until the late 1950s (prior operations having been performed using horse and manpower) and after further noting the closure of this camp in the mid- 1950s, the CRA Report nevertheless attributes without evidence various readings of fuel contamination to ACI operations. The fact that the Lake Ambrose site is currently used recreationally and that there exist nearby cottages (whose occupants may use the site for dumping waste and other activities) is not considered in the CRA Report. Section 2.2.3.5 of the CRA Report notes, without comment, *"Portions of the Lake Ambrose Site have been developed for residential purposes and are currently occupied by dwellings."* As between harvesting operations which have not been carried out at this site for some 50 years and then used only horsepower and manpower, and current recreational dwellers with powerboats, snowmobiles, ATV's, automobiles and generators, the Minister and her purported environmental expert CRA chose the most likely source for the observed contaminations of waste oil, fuel and similar items as being ACI;

(vii) the CRA sampling program was limited to six (6) logging camps deemed to be representative of the entire logging operations over time, which in proportion is inaccurate given the large proportion of logging camps set up and dismantled prior to the advent of mechanized forest practices; and

(viii) CRA has erroneously identified several dump sites within the limits of the suggested logging camp sites, which suggest adverse environmental conditions near areas currently occupied by cottage dwellers. The presence of surficial litter and refuse, described in part as containing "general debris and scrap metal", is not indicative of the presence of logging camp landfills which for health, safety and hygiene reasons were established further away from living quarters, and which presence likely could have been caused, at least in part, by Third party dumping.

(a) (ii) CRA identified 50 former logging camps by completing a literature search, reviewing aerial photographs, and by interviewing former ACI employees.

(b) Based on interviews with former ACI personnel, mechanization of the harvesting process reportedly began around the 1940s when tractors were being used to haul wood from the cut areas to central locations for transport across ponds/lakes and eventually rivers on logging drives. Road networks were constructed around the 1950s that allowed transport of wood product by trucks over woods roads from centralized loading areas to the pulp and paper mills in Grand Falls-Windsor and/or Bishop's Falls, NL. The use of tractors and trucks were likely part of camp's daily operations. Support infrastructure for camps and scale offices that pre-dated the introduction of pre-fabricated buildings in 1957 included the use of stove oil for heating appliances, kerosene for lanterns, and gasoline for tractors. Petroleum hydrocarbons to supply these camp commodities were typically stored in 205-Litre (L) drums. Therefore, it is likely that fuel impacts are associated with logging activities at this site.

(c) (i) The "third party" activities described in the comment are generally residential/recreational use. CRA's analysis was focused on the practices related to the logging camps' operations and thus the impacts are attributable to that use.

(ii) The fact that no past or pending environmental investigations or infractions have been identified by CRA does not mean that remediation is not necessary or required at the camps.

(iii) The "third party" activities described in the comment are generally residential/recreational use. CRA's analysis was focused on the practices related to the logging camps' operations and thus the impacts are attributable to that use.

(iv) The "third party" described in the comment, such as cabins, is generally residential use. CRA's analysis was focused on the practices related to the logging camps' operations and thus the impacts are attributable to that use.

(vi) *The time at which the Lake Ambrose Site was developed is uncertain; however, the historical records review and information provided by former ACI personnel indicate that logging camp operations ended in the mid-1950s after prolonged operations. Reportedly, the Lake Ambrose Site was a distribution hub for field supplies (materials, equipment, etc.) and personnel for other logging camps located in the vicinity of the Lake Ambrose Site and included a small gauge rail line from Millertown, which then extended to Harpoon.*

Mechanization of the harvesting process reportedly began around the 1940s when tractors were being used to haul wood from the cut areas to central locations for transport across ponds/lakes and eventually rivers on logging drives. Support infrastructure for camps that pre-dated the introduction of pre-fabricated buildings in 1957 included the use of stove oil for heating appliances, kerosene for lanterns, and gasoline for tractors. Petroleum hydrocarbons to supply these camp commodities were typically stored in 205-Litre (L) drums.

Eventually, road networks were constructed around the 1950s that allowed transport of wood product by trucks over woods roads from centralized loading areas to the pulp and paper mills in Grand Falls-Windsor and/or Bishop's Falls, NL.

Since Lake Ambrose operated at least until the mid-1950s, the use of tractors and trucks were likely part of its daily operations. Lake Ambrose was also a distribution hub for field supplies to other camps in the area, including petroleum hydrocarbons that were stored in drums. Therefore, it is likely that fuel impacts are associated with logging activities at this site.

Fuel oil was used at camps prior to 1940 for heating and lighting equipment. Mechanization of the harvesting process reportedly began around the 1940s when tractors were being used to haul wood from the cut areas to central locations for transport across ponds/lakes and eventually rivers on logging drives. CRA noted any potential impacts from adjacent properties or as a result of current uses.

(vii) *CRA identified 50 former logging camps by completing a literature search, reviewing aerial photographs, and by interviewing former ACI employees. CRA assessed the logging camps based on the dates of operations so this issue is properly and completely addressed by the representative scope of work implemented at the 6 camps.*

(viii) *CRA identified dump sites at the logging camps through interviews with former ACI personnel, site inspections, and volume of debris observed at each site.*

CRA observed disposal areas and landfills at these camps and did not base its conclusions on the presence of surficial litter. The Province has previously ordered ACI to close landfills at camps and these closure orders were not *followed.*

(b) the CRA Report fails to distinguish between lands operated by ACI and those owned or operated by third parties, including Abitibi-Consolidated Company of Canada, erroneously attributing to ACI the fault and responsibility for all;

The Phase I ESA details potential environmental impairment issues arising from ACI's operations. The Phase II ESA identifies actual areas of environmental impairment.

(c) the CRA Report, in the absence of applicable criteria identified in the Government's regulations, apply environmental standards from the Provinces of Ontario and/or British Columbia which technically and legally do not apply and are not adapted to Newfoundland and Labrador's distinctive hydrogeological and geological characteristics;

In the absence of CCME criteria specific to a non-potable groundwater condition, CRA compared the groundwater analytical results for metals, VOCs, PAHs, PCBs, and general chemistry to:

- *Ontario Ministry of the Environment Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act, March 9, 2004 - Table 3: Full Depth Generic Site Condition Standards in a Non-Potable Ground Water Condition for "All types of property use" (MOE Non-Potable Groundwater Criteria).*

The MOE Non-Potable Groundwater Criteria are generic risk-based criteria that evaluate several exposure pathways, including volatilization to indoor and ambient air, direct contact, etc. Evaluation of these pathways is important in order to be protective of human health. These criteria are frequently relied upon by the Newfoundland Department of Environment and Conservation in the absence of CCME criteria for sites with impacts to groundwater that is considered non-potable.

In the absence of applicable criteria identified in the regulations of the Province, the use of criteria from other jurisdictions in a Tier I assessment is consistent with the policies of the Newfoundland and Labrador Department of Environment and Conservation (DOEC) and represents standard practice in the Province.

Further, the criteria adopted by the Province for non-petroleum-based contaminants are the Canadian Council of Ministers of the Environment (CCME) criteria and Health Canada criteria, which are both generic criteria applicable throughout Canada and, therefore, are also "not adapted to Newfoundland and Labrador's distinctive hydrogeological and geological characteristics." The petroleum criteria used by the Province are the Atlantic Risk-Based Corrective Action (RBCA) Criteria and are applicable throughout Atlantic Canada. These *criteria are also not specifically adapted to the hydrogeological and geological characteristics of the Province.*

(d) the CRA Report, when comparing groundwater results to CCME surface water quality guidelines for the protecting of freshwater aquatic life or marine aquatic life, as applicable, fails to take into account that these guidelines apply at the point of discharge into the receiving surface water body and not at the location of the groundwater sampling well. In so doing, the CRA Report fails to consider natural attenuation as well as faith and transportation processes occurring in the soil and groundwater before the latter actually reaches and discharges into the receiving surface water, thereby fatally and consistently identifying limit exceedances that are, in all likelihood, not real;

As noted in the CRA Report,

As the sample locations were in close proximity to surface water, most within 150 m, CRA also compared the groundwater analytical results for BTEX/TPH, metals, VOCs, PAHs, PCBs, and general chemistry to:

- *CCME Canadian Water Quality Guidelines for the Protection of Aquatic Life Summary Table Update 7.1, December 2007 for marine environments (CCME Aquatic Life Criteria)..*

  CRA used the CCME Aquatic Life Criteria as a screening tool to evaluate the need for an Ecological Risk Assessment for the Site.

CRA used the CCME Canadian Water Quality Guidelines for the Protection of Aquatic Life Summary Table 7.1, December 2007 as a screening tool to evaluate the need for an Ecological Risk Assessment. CRA did not use the CCME Aquatic Life Criteria to determine areas requiring remediation.

(e) the CRA Report fails to ascertain and account for a baseline for naturally occurring levels of minerals in soil and groundwater;

The CRA Report was prepared, to the extent possible, in accordance with the CSA Standards[1]*. An assessment of naturally-occurring concentrations of minerals is beyond the scope of a typical Phase I or Phase II ESA.*

(f) the CRA Report presents testing results without interpretation or context sufficient to permit any assessment of actual risk or relative importance of real or potential adverse effects;

The CRA Report details evidence of discharges of substances in amounts that, in

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[1] One notable deviation from the requirements of CSA Standard Z768 is the omission of interviews with personnel familiar with the Site. ACI refused to allow its employees to discuss past operations with CRA. To the extent possible, CRA interviewed former ACI personnel.

my opinion, cause or may cause an adverse effect.

(g) the CRA Report relies, in certain instances, on false or erroneous information in respect of the sites which are targeted by the report;

As noted in the CRA Reports and consistent with CSA Standard CZ768, with respect to the Phase I ESAs, "CRA relied on information received from all parties as accurate, unless contradicted by field observations or written documentation."

ACI refused to provide CRA with any information regarding ACI's operations at the ACI Sites, which may have corrected or at least identified the "false or erroneous information" upon which ACI claims that CRA relied.

(h) the information on which the CRA Report is based was at times obtained through hazardous field sampling techniques, including drilling bore holes through likely self-contained and stable sites into groundwater below, which can contribute or cause contamination which did not previously exist; and

CRA provided copies of its Standard Operating Procedures (SOPs) to ACI and ACI's environmental consultant, AMEC Earth and Environmental (AMEC). CRA's SOPs are designed to guide CRA field staff to complete task appropriately and document the steps that CRA takes to prevent cross contamination into deeper geological units.

(i) there is consistently no reference to, and discussion of, potential sources of sample contamination that occurred during field sampling activities, potentially leading to the identification of false limit exceedances.

CRA provided copies of its SOPs to ACI and AMEC. CRA's SOPs document the steps that CRA takes to ensure that sample contamination does not occur. CRA validated all of the data included in the CRA Reports using standard laboratory data validation procedures. Where indications of field or laboratory sample contamination were identified, these are documented in the data tables and in the Data Validation Memoranda included in the Appendices to the CRA Report.

22. ***ACI IS A PERSON RESPONSIBLE***

"Person responsible" is defined in section 2(x) of the Act.

(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);

The definition of "person responsible" is very broad. You are a previous owner of a substance or thing or a person who has had management or control of a substance or thing and thus would be captured within the definition of "person responsible", whether or not your are an "owner".

23. INAPPLICABILITY OF LIMITATIONS ACT / WAIVER / LACHES / ACQUIESCENCE

I reject your argument concerning waiver, laches or acquiescence has no merit. Throughout its dealings with ACI, the Province has taken steps to have ACI comply with all applicable legislation at the Logging Camps sites. At no time did the Province acquiesce in the deprivation of its rights.

Your final ground of appeal is based on the application of the *Limitations Act.* Specifically, you assert that the Province is statute-barred from proceeding against you because any conduct to be complained of must relate to the time period prior to November 12, 2003.

I reject this argument also. In making the Order, I was exercising a power granted to me under the *Environmental Protection Act.* I was not commencing a cause of action in which judicial relief was being sought.

For all of these reasons the Appeal is dismissed.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 8th day of February, 2010.

Charlene Johnson

Charlene Johnson
Minister of the Department of
Environment and Conservation

TAB 8

PP. 11, 13-16

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF
MONTRÉAL

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, as amended

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

FORTY-SEVENTH REPORT OF THE MONITOR
July 6, 2010

relief is given, such claims would be forever barred in accordance with the Claims Procedure Orders.

39. As a result, when the Cross-Border Petitioners' claims are finally determined pursuant to the Claims Determination Order, the total claims against the Cross-Border Petitioners in the Chapter 11 Proceedings will be greater than the total claims against the Cross-Border Petitioners in the CCAA Proceedings (the "**Claims Delta**").

40. The Monitor has conducted a review of the Scheduled Claims in respect of the Cross-Border Petitioners. As at the date hereof, the Monitor has identified 799 creditors with Scheduled Claims totalling approximately CDN$9.9 million against BCFPI and 12 creditors with Scheduled Claims totalling CDN$1.1 million against Bowater Maritimes Inc.

41. In order to rectify this difference and to ensure that the Claims Process is fair to all of the creditors, the Monitor recommends that the Scheduled Claims identified in the Claims Delta be deemed to be filed and accepted claims for the purposes of the CCAA Proceedings, subject to any amendments by the Cross-Border Petitioners of the Scheduled Claims as a result of the Amended Schedule Process.

42. This will be administratively less burdensome upon the estates as it will eliminate the need to continually reconcile the claims register in the Chapter 11 Proceedings with the Monitor's claims database for the Cross-Border Petitioners for purposes of voting on the CCAA Plan, will make distributions under the Plans easier and will also facilitate the implementation of the Rights Offering (as defined herein).

THE CCAA PLAN

43. A copy of the CCAA Plan is attached as Exhibit R-2 to the Motion, a copy of which is posted on the Monitor's website. A previous draft of the CCAA Plan was attached as an appendix to the Forty-Second Report. Since the date of the Forty-Second Report, the Petitioners have been engaged in ongoing negotiations and discussions with various advisors and stakeholders, including government agencies and unions, with respect to the structure of the CCAA Plan.

44. The Petitioners and the Monitor believe that the most likely alternative to the implementation of a CCAA Plan would be a liquidation of the Petitioners' assets under the CCAA, the *Bankruptcy and Insolvency Act* (Canada) or other statutes and the distribution of the net proceeds to the creditors of the Petitioners in accordance with their respective priorities.

45. Accordingly, the Monitor, with the assistance of the Petitioners, has prepared an illustrative estimate of the net realizable value of each the Petitioners' assets and operations (the **"Assets"**) assuming liquidation proceedings, based on the assets and liabilities as shown in the Petitioners' financial records as at March 31, 2010 (the **"Liquidation Analysis"**). The Liquidation Analysis, including the key assumptions related thereto, is contained in Appendix F to the Information Circular.

46. In the Monitor's view, such realization proceedings would likely result in the sale of a limited number of the Petitioners' select operations on a going concern basis, an orderly wind down of the remaining operations and the liquidation of the remaining assets. As set out in the Information Circular, the Petitioners believe the CCAA Plan will produce a more favourable result for the affected unsecured creditors of the Petitioners (the **"Affected Unsecured Creditors"**) than a liquidation of the Petitioners' Assets and will provide the Petitioners with the opportunity to continue as a going concern with a recapitalized balance sheet.

47. The Monitor continues to review and discuss the CCAA Plan with the Petitioners and their stakeholders and will continue to do so in advance of the Creditors' Meeting (as defined herein).

48. Set forth below is a summary of the key elements of the CCAA Plan. The Monitor will provide a more detailed analysis of the CCAA Plan in a report to be filed with this Honourable Court on or before August 18, 2010.

Overview of the CCAA Plan

49. The CCAA Plan is designed to:

(i) provide for a co-ordinated restructuring and compromise of the Petitioners' debt obligations; and

(ii) reorganize and simplify the Petitioners' corporate and capital structure, in a way that is co-ordinated with the restructuring of the U.S. Debtors.

50. The CCAA Plan contemplates that the currently outstanding shares of ABH will be cancelled and that, upon emergence from the CCAA Proceedings, the Affected Unsecured Creditors of each of the Petitioners will receive their *pro rata* shares of the new common stock (the "**New ABH Common Stock**") of a new parent holding company ("**Reorganized ABH**") under which the reorganized Petitioners will be directly or indirectly held. Reorganized ABH will also be the parent holding company under which the reorganized U.S. Debtors will be directly or indirectly held and the affected unsecured creditors of each of the U.S. Debtors will be similarly treated under the U.S. Plan (as defined below).

51. An exception applies to those Affected Unsecured Creditors with claims of less than CDN$6,073 (US$5,000 equivalent using the exchange rate of US$1.00=CDN$1.2146, being the rate in effect as of the date of the Initial Order) or who elect to reduce their Claim to CDN$6,073 (US$5,000 equivalent) for distribution purposes only who will receive a cash distribution (as described in greater detail at paragraphs 57 to 60 of this Report). Similar treatment is provided under the U.S. Plan (as defined below) for creditors whose claims are less than US$5,000, or who elect to reduce their claim to US$5,000.

52. The New ABH Common Stock to be allocated to the Affected Unsecured Creditors of each of the Petitioners is based upon a fixed number of shares allocated to each of the Petitioners. Schedules C and D of the CCAA Plan set out the number of shares and percentage of New ABH Common Stock allocated to each of the Petitioners and are attached hereto as Appendix "G". Based on these schedules, the ACI Petitioners will

receive approximately 30.1% and the Bowater Petitioners will receive approximately 7.2% of the New ABH Common Stock. The remainder of the New ABH Common Stock will be allocated to the U.S. Debtors.

53. Accordingly, the number of New ABH Common Stock to be received by individual Affected Unsecured Creditors of each of the Petitioners will be determined on a *pro rata* basis by the final quantification of the allowed claims for each of the Petitioners. The number of New ABH Common Stock attributable to each Petitioner is fixed under the CCAA Plan (as it is with each U.S. Debtor under the U.S. Plan (as defined below)) but the total allowed claims against each debtor is not yet finally determined. The final determination of the amount of the allowed claims is subject to the Claims Process as set forth in the Claims Procedure Orders and will likely differ from the preliminary estimates contained in the Information Circular.

54. For the purpose of voting on and receiving distributions pursuant to the CCAA Plan, the Claims are presently divided into twenty (20) classes, including one for each Petitioner, as set forth in the CCAA Plan.

55. In accordance with the Cross-Border Claims Protocol, any claims against the ACI Petitioners and the Bowater Petitioners are to be dealt with in accordance with the Claims Procedure Orders in the CCAA Proceedings. In addition, any claims against the U.S. Debtors are to be dealt with in accordance with Orders of the U.S. Bankruptcy Court in the Chapter 11 Proceedings.

56. In addition, all claims against any of the Cross-Border Petitioners shall be dealt with in accordance with the Cross-Border Voting Protocol and the Claims Procedures Orders, the CCAA Plan, the U.S. Plan (as defined below)and the Creditors' Meeting Order.

Treatment of Affected Unsecured Creditors

57. Each creditor in an Affected Unsecured Creditor Class who is owed CDN$6,073 *or less* will receive, if eligible, in full and final satisfaction of its proven claim, a cash distribution in an amount equal to 50% of the face amount of its proven claim (the "**Cash Distribution**").

58. However, each creditor in an Affected Unsecured Creditor Class who is owed CDN$6,073 or less, may file an Election Notice[2] with the Monitor by the Election Deadline[3], wherein such creditor may elect to receive New ABH Common Stock rather than the Cash Distribution.

59. In addition, each creditor in an Affected Unsecured Creditor Class who is owed *more than* CDN$6,073 has the option to file an Election Notice with the Monitor by the Election Deadline, wherein such creditor may elect to receive a cash distribution of 50% of CDN$6,073 (US$5,000 equivalent) rather than the New ABH Common Stock.

60. Each creditor comprised in an Affected Unsecured Creditor Class who is owed more than CDN$6073 and who has not filed an Election Notice by the Election Deadline (or who is not eligible to do so) and each creditor comprised in an Affected Unsecured Creditor Class who is owed CDN$6073 or less who has filed an Election Notice by the Election Deadline will receive, in full and final satisfaction of its proven claim in respect of such Affected Unsecured Creditor Class, its *pro rata* share of the number of shares of New ABH Common Stock (subject to dilution as described in the CCAA Plan) as set forth in the CCAA Plan.

Claims Not Subject to the CCAA Plan

61. The CCAA Plan does not affect **"Excluded Claims"** which include Administrative Claims, Secured Claims, Securitization Claims, Post-Filing Claims, Allowed Insured Claims and Government Priority Claims (each as defined in the CCAA Plan). Creditors with Excluded Claims will not be entitled to attend or vote at the Creditors' Meeting or receive any distribution under the CCAA Plan in respect of the portion of their claim which is an Excluded Claim.

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[2] "Election Notice" is defined herein to mean the election notice included in the form of Proxy which permits Affected Unsecured Creditors to make an election, if eligible, to receive the Cash Distribution or New ABH Shares.
[3] "Election Deadline" is the deadline for filing a Proxy.

Treatment of Unaffected Creditors

62. Generally, Unaffected Creditors will be repaid in full by the Petitioners on, or as soon as practicable after, the Implementation Date[4]. "**Unaffected Creditors**" are those creditors with Excluded Claims in respect of and to the extent of such Excluded Claims.

Chapter 11 Priority Claims

63. As set out in the Thirty-Second Report of the Monitor dated February 19, 2010, the U.S. Bankruptcy Code establishes certain priorities with respect to creditor claims that are not recognized under the CCAA. Creditors of the Cross-Border Petitioners are impacted by these differences. Examples of priorities afforded under the U.S. Bankruptcy Code that are not provided for under the CCAA are as follows:

(a) pursuant to Section 503(b)(9) of the U.S. Bankruptcy Code, a supplier may seek administrative expense claim treatment (which claims are entitled to payment in full upon emergence of the Petitioners from the Chapter 11 Proceedings) for monies owed to the supplier of goods received by the Petitioners within twenty days before the filing of the Chapter 11 Proceedings and sold in the ordinary course of the Petitioners' business (the "**503(b)(9) Claim**");

(b) employees have a priority claim under Section 507(a)(4) of the U.S. Bankruptcy Code for wages, salaries or commissions including vacation, severances and sick leave earned during the 180 days before the filing up to a limit of $10,950 less any pre-filing amounts paid by the Petitioners after the filing date (the "**Wage Priority Claim**");

(c) claims for contributions made to an employment benefit plan arising from services rendered during the 180 day period before the filing may also be subject to priority treatment under Section 507(a)(5) of the U.S. Bankruptcy Code, subject to certain caps and deductions (the "**Priority Benefit Claim**"); and

[4] "Implementation Date" is defined in the CCAA Plan as the business day on which all conditions to implementation of the CCAA Plan have been satisfied or (to the extent legally permissible) waived and the Monitor has filed a certificate with the Court confirming the foregoing.

TAB 9

P.7

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF
MONTRÉAL

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, as amended

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

FIFTY-FIRST REPORT OF THE MONITOR
July 20, 2010

The Monitor has been advised by the Petitioners that an amendment to the Backstop Commitment Agreement is in the process of being executed.

25. As a result of the delay in the Disclosure Statement Hearing to July 30, 2010, the U.S. Debtors' timetable to solicit proxies and confirm the U.S. Plan has been delayed by approximately 3 weeks. As a result, the Petitioners are proposing a new timetable for the CCAA Proceedings that will align with the U.S. timetable for the Chapter 11 Proceedings. The changes are as follows:

Description	**Original Date**	**Revised Date**
Mailing Record Date	June 30	Same
1st Rights Offering Record Date	June 30	Same
Mailing and publication of notices and materials	July 26	August 9
2nd Rights Offering Record Date	August 17	Same
Voting Record Date	August 17	September 7
Monitor's Report	August 18	September 3
Deadline to submit proxies	August 25	September 13
Meeting Date	August 26	September 14
1st Rights Offering Expiration Date	August 31	September 10
2nd Rights Offering Expiration Date	September 3	September 10
Objections Deadline (Notice of contestation re: Sanction Hearing)	September 3	TBD
Sanction Hearing	September 8	September 17[1]
Emergence Target Date	October 1	October 11

[1] Subject to the Court's availability

TAB 10

PP. 8-9

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

SUPPLEMENTARY AFFIDAVIT OF DONNA BALLARD

SUPPLEMENTARY AFFIDAVIT OF DONNA BALLARD

I Introduction and Overview

1. In this affidavit Her Majesty the Queen in Right of the Province of Newfoundland and Labrador ("the Province") responds to the Contestation filed by Abitibi (as defined in its Amended Contestation dated 20 January 2010) with respect to the Province's motion for a declaration, *inter alia*, 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 section 99 of the *Environmental Protection Act*, S.N.L 2002, chap. E-14.02 ("EPA") (the "EPA Orders") 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.

2. In its Contestation, Abitibi makes the following assertions, among others:

(a) That the EPA Orders are monetary in nature and so barred by the Initial Order and the Claims Procedure Order issued by this Court (collectively, the "CCAA Orders") in the proceedings commenced by Abitibi *et al* under the *Companies' Creditors Arrangement Act* ("CCAA");

(b) That the EPA Orders, being barred by the CCAA Orders, would not be part of the plan of arrangement, as a result of the Province's failure to file a proof of claim;

(c) That the EPA Orders were issued in bad faith, and in violation of fairness and due process;

(d) The EPA Orders were based on the work of Conestoga-Rovers & Associates ("CRA"), which is flawed;

(e) That Abitibi is not a person responsible, within the meaning of the EPA, because it no longer owns or controls the Buchans site or the Grand Falls - Windsor site;

(f) That other parties are responsible for some of the contamination at certain of the sites, and that the continuing operations of one of those parties at the Buchans site would, in any event, make it impossible for Abitibi to undertake any remediation;

(g) That, even if the EPA Orders were validly issued, and survive the conclusion of the CCAA process, they cannot be complied with because Abitibi no longer has possession, control or power over its former sites.

3. With respect, the Province does not accept that this Court has the constitutionally effective jurisdiction to make findings about, or otherwise to inquire into, any of the matters raised by Abitibi and described in subparagraphs (c)-(g) in paragraph 2 above or which otherwise pertain to the legal or factual merits of EPA Orders, including: the Province's motive or intention in issuing these orders; the existence or non-existence of persons other than Abitibi who might also be responsible for the contamination that is the subject of the orders; and defences that Abitibi may seek to raise in response to these orders.

4. It is the Province's position that any factual or legal arguments that Abitibi wishes to make about the merits of the EPA Orders may be decided only in accordance with the EPA or other laws of the Province and in administrative or judicial proceedings established by and conducted under the laws of the Province. Indeed, Abitibi has, pursuant to the EPA and the laws of the Province, appealed the EPA Orders. It has done this in the correct forum, established under the laws of the Province for that purpose, and has raised in its appeal, among other arguments, the matters described in paragraph 2 above.

5. Unfortunately, by making the assertions it does in the Contestation over the legal and factual merits of the EPA Orders, Abitibi attempts to distort the issues before the Court on this motion under the CCAA and the *Constitution Act, 1867* arising from the terms of the CCAA Orders. Accordingly, by this Affidavit, the Province is providing additional background to the EPA and the EPA Orders to eliminate those distortions and to direct the Court to the relevant issues before it.

II Background to the EPA Orders

a) The *Environmental Protection Act*

6. The EPA is the environmental protection statutory regime in the Province.

7. The EPA permits the Minister to issue orders, requiring the remediation of contaminated sites, against the person responsible for a contravention of the EPA. The EPA defines a "person responsible" to include the owner of a substance or thing, the owner or occupier of land on which an adverse

effect has occurred or may occur, the owner or operator of an undertaking, and a previous owner of a substance or thing.

8. An order issued under section 99 of the EPA requires a person to take certain steps to remediate contamination. An order issued under section 99 of the EPA does not require a person to pay money, directly or by necessary implication, to the Province. An order issued under Section 99 of the EPA is not, directly or by necessary implication, a claim for compensation by the Province. Section 99 of the EPA does not, therefore, create any debtor-creditor relationship between the Province and the person who is subject to the order.

9. Section 107 of the EPA provides a mechanism whereby an order under section 99 may be appealed. Abitibi has, by filing appeals from the EPA Orders, elected to use that mechanism. A copy of the EPA is communicated herewith as **Exhibit NL-7.**

b) **The Abitibi Sites**

10. The sites owned, or formerly owned, by Abitibi (as defined above, and including its predecessors) in the Province, that are the subject of the EPA Orders, are described below.

i) **Buchans**

11. The Buchans site consists of a number of metal mines, and the associated ore processing and waste disposal facilities. Metal mining operations had been conducted on the Buchans site since the 1920s. By a Co-Tenancy Agreement, entered into as of the first day of January, 1976, Price (Nfld.) Pulp & Paper Limited, a predecessor of Abitibi, became a co-tenant with ASARCO Incorporated ("ASARCO") of the Buchans site. ASARCO and Abitibi are, in correspondence and in other documents related to Buchans, variously described as the "Co-Tenancy" or the "owners". A copy of the Co-Tenancy Agreement is communicated herewith as **Exhibit NL-8.**

12. Mining operations at the Buchans site ceased in 1984. Following the cessation of the mining operations, some work was undertaken with respect to the closure of the mines and remediation of the contamination caused by the mining operation.

13. In November of 1991, ASARCO and Abitibi entered into a "Environmental Compliance Schedule (Buchans Co-Tenancy)" (the "Compliance Schedule"). The other parties to the Compliance Schedule were Environment Canada and the Newfoundland Department of Environment & Lands. The Compliance Schedule stated that the objectives of the compliance program were the following:

This Agreement between the Buchans Co-Tenancy, Environment Canada and the Newfoundland Department of Environment & Lands details an environmental compliance program to be undertaken by the owners, ASARCO Inc., and Abitibi-Price Inc., at the now abandoned Buchans operation. The objectives of this program are:

1. To protect the water quality and aquatic life of Buchans Brook, Red Indian Lake, and the Exploits River.

2. To comply with the federal Fisheries Act, and the Metal Mining Liquid Effluent Guideline made pursuant to Section 36 of that Act, and the Newfoundland Environmental Control (Water and Sewage) Regulations, 1980.

3. To establish and undertake environmental monitoring and evaluation programs.

A copy of the Compliance Schedule is communicated herewith as **Exhibit NL-9.**

14. Given that the mining, and related operations, caused the discharge of contaminants that affected areas beyond the Buchans site, including, for example, Buchans Brook, Red Indian Lake and the Exploits River, the Compliance Schedule included those areas.

15. The obligations described in the Compliance Schedule were those required by federal and provincial law. What the Compliance Schedule did was impose specific time lines on fulfilling those obligations, as well as imposing certain reporting requirements.

16. Pursuant to the Compliance Schedule, ASARCO, on behalf of the Co-Tenancy, filed quarterly reports with Environment Canada and the Province. In addition to the quarterly reports, ASARCO, directly or through its environmental consultants, filed periodic reports on behalf of the Co-Tenancy, on matters related to the environmental condition of the site.

17. Almost immediately following the signing of the Compliance Schedule, and from time to time thereafter, the Co-Tenancy asked for extensions to the deadlines in the Compliance Schedule. The extensions were requested because the remediation work required by the Compliance Schedule had not been completed. The most recent was a request for an extension until June of 2009.

18. In August of 2005, ASARCO filed for Reorganization under Chapter 11 of the *United States Bankruptcy Code*.

19. In July of 2006, Abitibi submitted, to Environment Canada, and to the Department of Environment and Conservation of the Province, what was called a "Buchans Mine Action Plan Towards Environmental Compliance and Closure" (the "Action Plan"). That Action Plan contained the following statement:

> Abitibi-Consolidated ("Abitibi") is continuing its commitment to the required environmental compliance and closure of the Buchans mine site ("Site"). An Environment Closure Schedule ("Schedule") has been agreed between the provincial and federal governments and the former Co-Tenancy (ASARCO and Abitibi) and this continues to be the guideline for which all remediation and compliance roles are established. Since cessation of mining operations at the Site in 1984, numerous initiatives have been undertaken to assist in meeting the Schedule. Results to date have been encouraging with natural, passive, bio-remediation techniques taking priority over mechanical or chemical treatment systems.

20. The Action Plan was stated to have the following objectives:

> The overall objective of the Plan is compliance with the applicable provincial and federal regulations. Specifically, they are:
>
> 1. To comply with the federal *Fisheries Act* and the Metal Mining Liquid Effluent Regulation and Guidelines, made pursuant to Section 36 of that Act, and the Newfoundland Environmental Control (Water and Sewage) Regulations, 1980.
>
> 2. To protect the water life and aquatic life of Buchans Brook, Red Indian Lake and the Exploits River.
>
> 3. To establish and undertake environmental monitoring and evaluation programs.

A copy of the Action Plan is communicated herewith as **Exhibit NL-10.**

21. In August of 2008, Abitibi wrote to the provincial Department of Environment and Conservation to indicate that Abitibi had retained AMEC Earth & Environmental ("AMEC") to conduct a Phase I ESA at the Buchans site to "identify potential areas of concern ("AOCs") posed by the past mining operations at the above-mentioned location". Abitibi further stated that "As part of the Phase I ESA, AMEC will also perform a preliminary risk screening of each AOC to determine the need for subsequent Phase II ESA work. The risk screening will identify if there is

any potential for exposure and impact to human health and/or to the environment. The results of this screening assessment, as well as recommendations for next steps, as appropriate, will be included in a Phase I ESA report, to be submitted to NLDOEC who will review and concurrence." A copy of Abitibi's letter to the Province, dated 14 August 2008 is communicated herewith as **Exhibit NL-11**.

22. By letter dated 12 June 2009, the Province asked Abitibi to provide ESA reports for the Abitibi sites, as well as an update on the status of remediation work at those sites. A copy of the Province's letter, dated 12 June 2009 is attached to the Province's Motion as **Exhibit NL-1**, and is reproduced here for ease of reference.

23. By letter dated 18 June 2009, counsel for Abitibi responded to the Province's request by saying that the reports either did not exist, or if they did exist, had not been reviewed by Abitibi. A copy of Abitibi's letter to the Province, dated 18 June 2009, is attached to the Province's Motion as **Exhibit NL-2**. It is reproduced here for ease of reference. The Province notes that none of the material asked for in its letter to Abitibi of 12 June 2009, has yet been provided to the Province.

24. As of June, 2009, the work and studies variously promised in the Compliance Schedule, the Action Plan, and the August, 2008 letter, had not been, respectively, completed and filed.

ii) Stephenville

25. Abitibi operated a pulp and paper plant at Stephenville from approximately 1980 on. Abitibi closed the plant in 2005.

26. Following the closure of the Stephenville plant, Abitibi took steps to decommission the site. Those steps included the preparation of a Phase II/III Environmental Site Assessment ("ESA") and a Remedial Action Plan ("RAP"). However, Abitibi did not provide a report on the findings of the Phase II/III ESA and did not provide a RAP to the Province.

27. In his letter of 18 June 2009, referred to in paragraph 23 above, counsel for Abitibi advised that the outstanding Phase II ESA report was in draft form, and that the bulk of the remedial action plan remained to be developed in light of the pending Phase II ESA work.

iii) Grand Falls-Windsor

28. Abitibi operated a pulp and paper plant at Grand Falls-Windsor ("GFW") from approximately 1910 on. Abitibi closed the GFW plant, effective March, 2009.

29. In order to conduct its operations at GFW, Abitibi required both a general certificate of approval, issued pursuant to the EPA, as well as certificates of approval for specific aspects of its operations. Abitibi was required to report to the Province on compliance with those certificates of approval. In addition, Abitibi provided the Province with reports, from time to time, on specific incidents involving the discharge of contaminants.

30. As a result of the Certificates of Approval, the periodic reports on compliance with the requirements of those Certificates of Approval, and reports on incidents involving discharges of contaminants, the Province was aware of the discharge of contaminants into the environment as a result of the operations at the GFW site. A copy of Abitibi's general certificate of approval for GFW, which is Certificate of Approval No. AA05-015441, is communicated herewith as **Exhibit NL-12**. An example of a certificate of approval for a specific matter, being Certificate of Approval GF-WMS09-05647D, is communicated herewith as **Exhibit NL-13.**

31. Following the closure of the GFW operation, Abitibi was required, by the terms of Certificate of Approval No. AA05-015441 to provide, among other things, an "Industrial Site Decommissioning and Restoration Plan" ("Plan"). The Plan was to address, among other things, how Abitibi proposed to deal with environmental contamination on the site.

32. In his letter of 18 June 2009, referred to in paragraph 23 above, counsel for Abitibi advised that preparation of the Plan was "ongoing".

iv) Botwood

33. Botwood was a shipping terminal operated by Abitibi from approximately 1910 on. The shipping terminal had two principal purposes. One was a shipping terminal for ore mined the Buchans site and for paper produced at GFW. The other was for the receipt of Bunker C oil used in the operations at Buchans. Abitibi closed Botwood at or about the same time as GWF in 2009.

34. Between approximately 2001 and 2009, Abitibi commissioned a number of reports on the environmental condition of its facilities in Botwood. In his letter of 18 June 2009, referred to in paragraph 23 above, counsel for Abitibi stated that: "Although a limited number of reports do exist, they have not been reviewed and approved by our client's senior environmental personnel in Montréal, and are, accordingly, not from our client's point of view, final."

v) Logging Camps

35. Abitibi and its predecessors operated approximately 50 logging camps, spread across the Province. To the best of the Province's knowledge,

Abitibi had not conducted either ESAs or remediation work at any of those logging camps.

36. In his letter of 18 June 2009, referred to in paragraph 23 above, counsel for Abitibi advised the Province that "respecting the suggested ESA reports from our client's former logging camps and woodlands operations, none exist as the ESA process has not yet been initiated."

III The CRA Reports and EPA Orders

37. With its closure of the GFW plant, Abitibi ceased all operations in the Province. In respect of every site at which Abitibi had operated, the Province had information, much of it supplied by Abitibi, indicating that the discharge of contaminants into the environment on those sites. However, the Province had no complete, up-to-date reports on the environmental conditions at those sites, and whether, or to what extent, Abitibi had remediated contamination at those sites. As a result, the Province had reason to believe that, if there had been contaminants on the site, there had been either no remediation or the remediation was incomplete.

38. As set out in paragraph 22 above, the Province asked Abitibi, in June of 2009, for status reports on the environmental condition of Abitibi's various sites, and for copies of any reports on that subject. As described in paragraph 23 above, counsel Abitibi effectively refused to provide those reports.

39. Given Abitibi's refusal to provide the Province with reports which would indicate the state of contamination, and the status of any remediation work, on the sites on which Abitibi had operated, and given what the Province knew about the seriousness of the contamination on those sites, the Province had no choice but to arrange for an independent assessment of the environmental condition of those sites. In July of 2009, CRA was instructed to undertake Phase I and II ESAs of the sites.

40. In order to expedite the assessment process, the Province asked Abitibi for permission to get access to the sites to conduct its assessments. Abitibi granted that permission, but only after a lengthy negotiation and the imposition of a number of conditions. . Those conditions included a requirement that Abitibi review CRA's standard operating procedures, review CRA's proposed test sites and review CRA's proposed testing methodologies. Abitibi also imposed a condition that its environmental consultant be allowed to accompany CRA during all of its testing, and to take split samples.

41. The lengthy negotiation over the terms of access, and the delays occasioned in the assessment work itself as a result of the need to have AMEC present, delayed the completion of the assessment.

42. During the course of its assessment work, CRA was required to seek the permission of Abitibi to get access to the Stephenville, Botwood and GFW sites, and to have Abitibi and AMEC personnel present when it undertook its assessment work. Abitibi thus exercised control over its sites, notwithstanding that it no longer conducted operations at those sites.

43. With the exception of CRA's work on the logging camps, and at Buchans, Abitibi had its consultant, AMEC, accompany CRA. AMEC took split samples of all of the tests that CRA conducted. AMEC, and therefore Abitibi, would have known what contamination CRA had identified and, therefore, would have known the findings that CRA was likely to make. In addition, Abitibi was in possession of reports indicating the environmental contamination at its sites. Given all of that, the fact that the Province would issue section EPA Orders, and indeed the content of those Orders, would hardly have been a surprise to Abitibi.

44. The CRA reports indicated the existence of environmental contamination, at levels exceeding applicable standards, at all of the former Abitibi sites. In the case of Buchans, the CRA reports indicated the presence of contaminants of a kind and at concentrations that posed a threat to human health.

45. The CRA reports were required by the discharge of contaminants into the environment at the Abitibi sites, by the apparent failure of Abitibi to fulfil its obligations to remediate contamination at the sites which it had operated, by the uncertainty as to whether Abitibi would undertake any further remediation work, and by the need for an independent assessment of the environmental condition of the sites. In addition, the assessment process which gave rise to the reports was done with the full knowledge, and active involvement of, Abitibi and its consultant, AMEC.

46. The EPA Orders were issued in order to ensure that Abitibi fulfilled its legal obligations to remediate the contamination it had discharged, on its sites, into the environment. The EPA Orders were also issued to ensure that Abitibi, its creditors, and this Court were aware of Abitibi's obligations as a plan of arrangement was developed.

AND I HAVE SIGNED:

DONNA BALLARD

SOLEMNLY AFFIRMED before me at ST. Swain, this 25 day of January, 2010

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