

File Number:

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC)**

B E T W E E N:

**HER MAJESTY THE QUEEN
IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR**

Applicant
(Appellant)

- and -

**ABITIBIBOWATER INC., ABITIBI-CONSOLIDATED INC.,
BOWATER CANADIAN HOLDINGS INC., THE AD HOC COMMITTEE OF
BONDHOLDERS, THE AD HOC COMMITTEE OF SENIOR SECURED
NOTEHOLDERS, and U.S. BANK NATIONAL ASSOCIATION
(INDENTURE TRUSTEE FOR THE SENIOR SECURED NOTEHOLDERS)**

Respondents
(Respondents)

**NOTICE OF APPLICATION FOR LEAVE TO APPEAL
OF HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
NEWFOUNDLAND AND LABRADOR, APPLICANT**

Pursuant to Subsection 40(1) of the *Supreme Court Act*, and
Rule 25 of the Rules of the Supreme Court of Canada

TAKE NOTICE that Her Majesty The Queen In Right of the Province of Newfoundland and Labrador (the "**Province**") hereby applies for an order granting the Province leave to appeal to this Court, pursuant to subsection 40(1) of the *Supreme Court Act*, and Rule 25 of the Rules of the Supreme Court of Canada, from the judgment of the Court of Appeal for Québec, Court of Appeal File Number 500-09-020594-107 (500-11-036133-094), made 18 May 2010; or for such further or other order that the Court may deem appropriate.

AND FURTHER TAKE NOTICE that this application for leave is made on the following grounds:

1. In this case the courts below held that the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**") could be used to relieve AbitibiBowater Inc. and its affiliates (collectively, "**Abitibi**") of its statutory duty to comply with orders ("**EPA Orders**") made under the *Environmental Protection Act*, S.N.L. 2002, c. E-14.2 ("**EPA**") of the Province of Newfoundland and Labrador ("**Province**") to restore the lands and waters of the Province that had been polluted by Abitibi's century-long industrial activities in the Province.

2. Industrial pollution is one of the scourges of the modern age. Whether through deliberate action or carelessness, environmental contamination is frequently the by-product of industry's quest for profits. From the Sydney tar ponds in Cape Breton to the Cheakamus River derailment in British Columbia and the Gulf of Mexico oil spill, examples of catastrophic industrial pollution can be found across Canada and internationally.

3. In an effort to prevent pollution and to redress its effects, the federal and all provincial governments have enacted environmental protection legislation. At the heart of all this legislation is the "polluter-pay" principle. The "polluter-pay" principle requires that the person who is responsible for pollution be responsible for cleaning it up. The point of this principle is to ensure that governments are not left to clean up pollution caused by industrial activities and that taxpayers are not left footing the bill. This principle has become entrenched in the public policy of Canada and has been endorsed by this Court.

4. Consistent with the "polluter-pay" principle, the EPA Orders required Abitibi to develop and implement a remediation plan to restore property in the Province to its pre-contaminated state. Contrary to this principle and the terms of the EPA, the decisions below shifted the obligation and costs of removing contamination of the lands and waters of the Province from Abitibi and its creditors to the Province and its taxpayers.

5. This case raises thus raises the following question of public importance:
May a debtor's statutory duty to remove environmental contamination be extinguished under the CCAA like a commercial debt?

6. Three specific issues are raised:

- (i) The decision conflicts with judgments of other provinces that have considered the application of provincial environmental law to federal bankruptcy and insolvency law. Resolving this conflict and ensuring consistency across the country in the application of federal bankruptcy and insolvency legislation is a matter of public importance.
- (ii) The case raises a policy issue under federal bankruptcy and insolvency law over the question of who should bear the costs of compliance with environmental law (and by necessary implication, other regulatory laws) by a company attempting to restructure: the company's creditors or the public at large?
- (iii) The case raises an issue about the limits of the CCAA Court's power: whether the CCAA provides a court with the statutory authority to remove all hurdles under provincial law that impair a debtor company's ability successfully to restructure under the CCAA?

Dated at the City of Toronto, in the Province of Ontario, this 13th day of August 2010.

SIGNED BY:

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David R. Wingfield

/s/ Paul Guy
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NOTICE TO THE RESPONDENTS: A respondent may serve and file a memorandum in response to this application for leave to appeal within 30 days after service of the application. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration pursuant to section 43 of the *Supreme Court Act*.