No. S-206189

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1057863 B.C. LTD., NORTHERN RESOURCES NOVA SCOTIA CORPORATION, NORTHERN PULP NOVA SCOTIA CORPORATION, NORTHERN TIMBER NOVA SCOTIA CORPORATION, 3253527 NOVA SCOTIA LIMITED, 3243722 NOVA SCOTIA LIMITED and NORTHERN PULP NS GP ULC,

PETITIONERS

NOTICE OF APPLICATION

Names of applicants: the Petitioners

TO: Service List, a copy of which is attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by the applicants to Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, British Columbia, by Microsoft Teams on Thursday, the 31st day of March, 2022 at 10 a.m. for the orders set out in Part 1 below.

PART I - ORDER(S) SOUGHT

1. An order substantially in the form attached hereto as **Schedule "B"** (the "**Mediation Order**"), granting, among other things, the following relief:

   (a) approving the mandatory Mediation Process (as defined and set out in further detail herein) with respect to the Mediation Claims (as defined herein), as between the Petitioners, the Province of Nova Scotia (the "**Province**"), and certain other Mediation Parties (as defined herein);

(b) appointing the Honourable Thomas Cromwell, C.C., as an officer of this Honourable Court (in such capacity, the "**Court-Appointed Mediator**") to act as a neutral third party to mediate a settlement of the Mediation Claims (as defined herein); and,

(c) tolling and suspending all filing deadlines, requirements to take steps, and other time prescriptions with respect to the Mediation Claims (as defined herein) but not including limitations periods governed by provincial limitations legislation, in any actions or other legal proceedings in respect of the Mediation Claims (as defined herein).

2. Such further and other relief as counsel may advise and this Court may allow.

PART II - FACTUAL BASIS

A. Background

1. The facts in support of this application are more fully set out in Affidavit #10 of Bruce Chapman, sworn October 18, 2021 (the "**Tenth Chapman Affidavit**") and Affidavit #11 of Bruce Chapman, sworn February 3, 2022 (the "**Eleventh Chapman Affidavit**").

2. On June 19, 2020, this Court pronounced an initial order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") that, among other things:

(a) commenced these proceedings (these "**CCAA Proceedings**"); and,

(b) granted a stay of proceedings for a ten-day period (the "**Stay Period**").

Initial Order at paras. 9 – 11.

3. The Stay Period was subsequently extended for a short period of time on three occasions until, on August 6, 2020, this Court pronounced an order amending and restating the Initial Order (the "**ARIO**").

4. Following several extensions of the Stay Period, on October 29, 2021, this Court pronounced an order (the "**October 29 Order**") that, among other things:

(a) extended the Stay Period to and including April 30, 2022;

(b) approved a further amendment to the term sheet in respect of the interim financing facility to extend the first milestone date until April 30, 2022 and revise the purpose section to permit funds to be used to advance the environmental assessment process for the transformation of the Petitioners' previously operated pulp mill (the "**Mill**"); and,

(c) approved the expenditure by the Petitioners of up to $450,000 to fund litigation expenses by the Petitioners during the extended Stay Period.

October 29 Order at paras. 1 – 3.

5. The Petitioners commenced these CCAA Proceedings to, *inter alia*:

(a) preserve their material assets by completing a safe and orderly decommissioning and hibernation of the Mill; and,

(b) pursue alternatives to the replacement project (as described in Affidavit #1 of Bruce Chapman, sworn June 15, 2020 ("**First Chapman Affidavit**")) (the "**Replacement ETF**") for the Boat Harbour Effluent Treatment Facility (the "**BH-ETF**") for re-starting the Mill, which remains the preferred outcome for the Petitioners in these CCAA Proceedings. In connection with the restarting of the Mill, the Petitioners also seek a settlement of their Intended Claims (as defined herein) against the Province. A successful resolution of both issues is critical to the successful restart of the Mill and the Petitioners' eventual emergence from these CCAA Proceedings as a going concern.

First Chapman Affidavit at para. 9;
Tenth Chapman Affidavit at para. 3;
Eleventh Chapman Affidavit at paras. 2 - 3, 13(c).

B. Status of EA Process

EA Process

6. The Petitioners have committed all necessary resources to and have made significant progress in clarifying and advancing the environmental assessment process for the Mill. The

Petitioners filed the Environmental Assessment Registration Document in respect of the Mill transformation project with the Nova Scotia Department of Environment and Climate Change on November 30, 2021.

Tenth Chapman Affidavit at paras. 8(c), 25, 29(a), 75;
Eleventh Chapman Affidavit at para. 19.

7. On or about December 21, 2021, the Province provided draft terms of reference for the preparation of an environmental assessment report (the "**Draft TOR**") by the Petitioner Northern Pulp Nova Scotia Corporation ("**NPNS**"). The Draft TOR contain a number of provisions that the Petitioners believe lack the clarity needed. NPNS is entitled to reply to the Draft TOR with comments by late February, 2022, and is working with an expert to do so. NPNS remains committed to working through environmental assessment process to find a viable process to renew the Mill.

Eleventh Chapman Affidavit at para. 20.

Legal disputes, settlement discussions, and preservation of legal rights

8. As described in further detail in the Tenth Chapman Affidavit, the Petitioners have actively but unsuccessfully sought to engage the Province in settlement discussions. Consequently, the Petitioners have also been required to take actions to preserve their legal rights as against the Province, including, *inter alia*, with respect to losses indemnified by the Province pursuant to an Indemnity Agreement, dated December 31, 1995 (the "**Indemnified Losses**"). NPNS claims that the Indemnified Losses would exceed $450 million and, therefore, constitute a significant asset of the Petitioners.

Tenth Chapman Affidavit at paras. 8(e), 41, 43.

9. Since the October 29 Order, there have been no substantive developments regarding potential settlement discussions and there is no indication that this situation will change. The court-appointed Monitor has engaged and is prepared to continue facilitating discussions between the parties to determine if there is any potential of facilitating an arrangement, outside of a court order, with respect to tolling and mediation between the Province and the Petitioners.

Eleventh Chapman Affidavit at para. 6.

10. As a result of this impasse, the Petitioners instructed their counsel to prepare and file a Statement of Claim (the "**Statement of Claim**") in the Nova Scotia Supreme Court in respect of their claims (collectively, with the claims of Paper Excellence Canada Holdings Corporation ("**PEC**") and Hervey Investment BV (Netherlands) ("**Hervey**") regarding the Indemnified Losses, the "**Intended Claims**"), as described in further detail in the Notice of Intended Action, served on October 14, 2021 (the "**Notice of Intended Action**").

Eleventh Chapman Affidavit at para. 7.

11. The Petitioners filed the Statement of Claim on December 16, 2021.

Eleventh Chapman Affidavit at para. 7.

12. PEC and Hervey are included, *inter alios*, as intended plaintiffs (collectively with the Petitioners, the "**Intended Plaintiffs**") in the Notice of Intended Action and the Statement of Claim, but are not Petitioners in these CCAA Proceedings. The claims, however, are interrelated and intertwined. PEC has funded the costs incurred up to October 29, 2021 in connection with the preservation and enforcement of the legal rights of the Intended Plaintiffs in connection with the Intended Claims and will pay 20% of the aggregate costs of preserving and enforcing the legal rights of the Intended Plaintiffs in connection with the Intended Claims against the Province during the current Stay Period.

Tenth Chapman Affidavit at paras. 55 and 95.

Eleventh Chapman Affidavit at para. 8.

13. The Pictou Landing First Nation ("**PLFN**") commenced an action (the "**PLFN Litigation**") against the Attorney General of Nova Scotia, representing, *inter alios*, the Province and the Petitioner NPNS, pursuant to a notice of intended action and a statement of claim dated September 9, 2010, which was amended on August 29, 2012 and February 15, 2019. Among other things, the February 15, 2019 amendment added and the Attorney General of Canada, representing Her Majesty the Queen in right of Canada, as a defendant. PLFN, through its counsel, has requested that NPNS or its owners pay some portion of the damages sought in the PLFN Litigation arising from the use of Boat Harbour and its alleged adverse impacts on PLFN since 2008. By way of a letter dated August 27, 2021 (the "**PLFN Indemnity Letter**") to the Honourable Lloyd Hines, Minister, Transportation and Active Transit, NPNS sought confirmation that the Province will indemnify and hold NPNS harmless from and against all claims, actions and

causes of action of PLFN against NPNS pursuant to the PLFN Litigation. In its responding letter dated September 21, 2021, the Province stated that it is not in a position to provide the confirmation requested in the PLFN Indemnity Letter. The Statement of Claim includes, among other claims, a claim under the indemnity.

Tenth Chapman Affidavit at paras. 62 - 64.

Eleventh Chapman Affidavit at para. 9.

Developments Regarding Proposed Mediation

14. Since the pronouncement of the October 29 Order, and in light of the lack of progress regarding voluntary settlement discussions or the negotiation of a tolling agreement with respect to the Intended Claims, the Petitioners have determined to seek this Court's approval of a mandatory Mediation Process (as defined herein). The Mediation Process is intended to provide a framework with a goal of achieving a global resolution of all Mediation Claims (as defined herein), without compromising the claims of any party should a negotiated settlement not be reached. As described in further detail below, the Petitioners propose that both the scope of, and parties to, the mediation will be determined by the Court-Appointed Mediator (as defined herein).

Eleventh Chapman Affidavit at para. 10, 12 - 13.

15. The flexibility contemplated by the Mediation Process is intended to permit the Court-Appointed Mediator to respond to any and all necessary or appropriate issues and to involve any and all applicable parties. It is further contemplated that the Mediation Process itself will be privileged, confidential, and non-binding. Any final settlement reached pursuant to the Mediation Process will be binding on all parties, and subject to approval of this Court to the extent it affects the interests of the Petitioners.

Eleventh Chapman Affidavit at paras. 11 - 12.

16. At a minimum, the Mediation Process is anticipated to include the following parties: (i) the Petitioners; (ii) Hervey and PEC; and, (iii) the Province. If the Court-Appointed Mediator determines that the participation of PLFN (or any other person) is necessary or advisable, the proposed form of order contemplates that such other person may be added as a Mediation Party (as defined herein). The Monitor may participate in the Mediation Process but will not become a Mediation Party, notwithstanding such participation.

Eleventh Chapman Affidavit at para. 12.

17. The Petitioners have sought an experienced mediator to serve as the Court-Appointed Mediator pursuant to the Mediation Process. Given the quantum of the Intended Claims and the complexity of the issues involved, the Petitioners believe it is particularly important that any mediator have extensive experience in resolving complex disputes involving multiple issues and parties, including parties in the public sector. To that end, the Honourable Thomas Cromwell, C.C., has confirmed his availability and willingness to serve as the Court-Appointed Mediator, if so appointed by this Honourable Court.

Eleventh Chapman Affidavit at para. 14.

18. In the Petitioners' view, the benefits of the Mediation Process will include, among other things:

(a) Providing a platform designed to facilitate a global resolution of all claims between the participants;

(b) Avoiding or minimizing litigation costs and the delays associated with the ordinary litigation process;

(c) Allowing the parties to reach a settlement regarding the Intended Claims, which is one of the Petitioners' two primary goals in these CCAA Proceedings (the other being completion of the Project and restart of the Mill). If both goals are reached, the emergence of the Petitioners from these CCAA Proceedings will provide numerous benefits to stakeholders, including, among others, local communities, former and current employees of the Petitioners, pensioners, the Nova Scotia forestry industry, and the economy of Nova Scotia generally. A settlement of the Intended Claims is viewed by the Petitioners as a key component of determining the risks and capital requirements to complete the Project and restart the Mill, and the two are accordingly linked;

(d) The Petitioners are hopeful that, outside of litigation, the Province, the Petitioners, and, if included, the PLFN will be able to reach a trilateral agreement that resolves the Intended Claims, the PLFN Litigation (to the extent determined necessary by the Court-Appointed Mediator), and any and all related claims, to the benefit of all

parties. In contrast, continuing with separate litigation processes is unlikely to result in a timely resolution of all such matters; and,

(e) To the extent that the PLFN participates in the Mediation Process, such participation may assist the Province in meeting its constitutional duty to consult.

Eleventh Chapman Affidavit at para. 13.

19. The proposed form of Mediation Order includes provisions tolling and suspending all filing deadlines, requirements to take steps, and other time prescriptions with respect to the Mediation Claims (but not including limitations periods governed by provincial limitations legislation), in any actions or other legal proceedings in respect of the Mediation Claims, until ninety (90) days after the conclusion of the Mediation Process (the "**Tolling Provisions**"); including, but not limited to, any such periods or requirements under *Nova Scotia Civil Procedure Rules*, Royal Gaz Nov 19, 2008, as amended. The purpose of such Tolling Provisions is described in further detail herein and includes ensuring that the Mediation Parties are able to direct their full attention to the Mediation Process, without the ongoing cost and distraction of litigation.

20. Attending to the litigation process would detract from the time and attention required to fully participate in the Mediation Process (as defined herein), and expend resources that may not be required. The proposed Mediation Process balances the prejudice to ensure that avenues of settlement and compromise are explored, without prejudicing any claims or defences should such mediation fail.

Eleventh Chapman Affidavit at para. 17.

21. The Petitioners advised the Province (through their respective counsel) of their intention to seek a Mediation Process on or around November 19, 2021.

Eleventh Chapman Affidavit at para. 15.

22. The Petitioners have sufficient funding available to fund the Mediation until the next stay extension from the litigation funding previously approved by the Court, and will seek any required increases at the next extension hearing.

Eleventh Chapman Affidavit at para. 17.

PART III - LEGAL BASIS

A. Mediation

Overview of the Proposed Mediation Process

1. The Petitioners seek the appointment of the Court-Appointed Mediator to act as a neutral third party to mediate the Medication Claims between the Petitioners, the Province, and any other person who becomes a Mediation Party (collectively, the "**Mediation Process**"). The Mediation Process contemplates that participation shall be mandatory.

2. The Mediation Process is intended to result in a global settlement of any and all rights, disputes, and claims arising or related to the Intended Claims, or such other claims as determined by the Court-Appointed Mediator in consultation with the Mediation Parties should be part of the Mediation Process (collectively, the "**Mediation Claims**").

3. It is proposed that, in carrying out his mandate, the Court-Appointed Mediator may, among other things:

(a) Adopt processes, procedures and timelines which, in his discretion, he considers appropriate to facilitate the negotiation of a settlement of any and all Mediation Claims (as defined herein);

(b) Facilitate and permit the participation of any person in the Mediation Process (in such capacity, each a "**Mediation Party**") provided that such person's participation, in the discretion of the Court-Appointed Mediator, is necessary or desirable for the resolution of the Mediation Claims;

(c) Retain independent legal counsel and such other advisors and persons as the Court-Appointed Mediator considers necessary or desirable to assist him in carrying out his mandate, including, without limitation, financial advisors;

(d) Consult with all Mediation Parties, the Monitor, creditors and stakeholders of the Petitioners, and any other persons the Court-Appointed Mediator considers appropriate;

(e) Apply to this Court for advice and directions as, in his discretion, the Court-Appointed Mediator deems necessary; and

(f) Take any other step or action that the Court-Appointed Mediator considers necessary or advisable to complete the Mediation Process.

Jurisdiction Pursuant to Section 11 of the CCAA

4. The Court's jurisdiction to grant the Mediation Order is founded on section 11 of the CCAA. Section 11 has been interpreted broadly, including "to sanction measures for which there is no explicit authority in the CCAA … On the plain wording of the provision, the jurisdiction granted by s. 11 is only constrained by the restrictions set out in the CCAA itself, and the requirement that the order made be "appropriate in the circumstances"."

9354-9186 Québec Inc. v Callidus Capital Corp., 2020 SCC 10, at paras. 65, 67 ("***Callidus***"), citing *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 at paras. 61 - 62 ("***Century Services***").

5. The authority to pronounce a discretionary order under section 11 of the CCAA is not unlimited. It must be exercised to further the remedial objectives of the CCAA, provided that the three "baseline considerations" are met: (i) that the order sought is appropriate in the circumstances, and (ii) that the applicant has been acting in good faith and (iii) with due diligence.

Callidus, *supra* at paras. 49 - 50, 70, citing *Century Services*, *supra* at paras. 59, 69 - 70.

6. Appropriateness is assessed by inquiring whether order sought advances the policy objectives underlying the CCAA. Specifically:

> "The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA — avoiding the social and economic losses resulting from the liquidation of an insolvent company. […] [A]ppropriateness extends not only to the purpose of the order, but also the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.".
>
> *Century Services*, *supra* at para. 70.

7. In *U.S. Steel Canada Inc. (Re)* ("***U.S. Steel***"), the Ontario Court of Appeal described the remedial purpose of the CCAA as follows:

> "There is no dispute about the purpose of the CCAA. It describes itself as "An Act to facilitate compromises and arrangements between companies and their creditors". Its purpose is to avoid the devastating social and economic effects of

> commercial bankruptcies. It permits the debtor to continue to carry on business and allows the court to preserve the status quo while "attempts are made to find common ground amongst stakeholders for a reorganization that is fair to all": *Century Services*, at para. 77."
>
> *U.S. Steel Canada Inc. (Re)*, 2016 ONCA 662 at para. 49 ("***U.S. Steel***").

8. In *Canada v Canada North Group*, Justice Côté (Wagner C.J. and Kasirer J. concurring), considered the flexible jurisdiction pursuant to section 11 of the CCAA and stated:

> "[18] … Although both the *CCAA* and the *BIA* create reorganization regimes, what distinguishes the *CCAA* regime is that it is restricted to companies with liabilities of more than $5,000,000 and "offers a more flexible mechanism with greater judicial discretion, make it more responsive to complex reorganizations" (*Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60, [201] 3 S.C.R. 379, at para. 14).
>
> […]
>
> [21] The most important feature of the *CCAA* - and the feature that enables it to be adapted so readily to each reorganization - is the broad discretionary power it vests in the supervising court (*Callidus Capital*, at paras. 47-48). Section 11 of the *CCAA* confers jurisdiction on the supervising court to "make any order that it considers appropriate in the circumstances". This power is vast. As the Chief Justice and Moldaver J. recently observed in their joint reasons, "On the plain wording of the provision, the jurisdiction granted by s. 11 is constrained only by restrictions set out in the *CCAA* itself, and the requirement that the order made be 'appropriate in the circumstances'" (*Callidus Capital*, at para. 67). Keeping in mind the centrality of judicial discretion in the *CCAA* regime, our jurisprudence has developed baseline requirements of appropriateness, good faith and due diligence in order to exercise this power. The supervising judge must be satisfied that the order is appropriate and that the applicant has acted in good faith and with due diligence (*Century Services*, at para. 69). The judge must also be satisfied as to appropriateness, which is assessed by considering whether the order would advance the policy and remedial objectives of the *CCAA* (para. 70).. […]
>
> [31] […] [C]ourts have ensured that the *CCAA* is given a liberal construction to fulfill its broad purpose and to prevent this purpose from being neutralized by other statutes: [TRANSLATION] "As the courts have ruled time and again, the purpose of the *CCAA* and orders made under it cannot be affected or neutralized by another [Act], whether of public order or not" (*Triton Électronique inc. (Arrangement relatif à*), 2009 QCCS 1202, at para. 35 (CanLII)). "This case is not so much about the rights of employees as creditors, but the right of the court under the [*CCAA*] to serve not the special interests of the directors and officers of the company but the broader constituency referred to in *Chef Ready Foods Ltd.* [*v. Hongkong Bank of Can.* (1990), 1990 CanLII 529 (BC CA), 51 B.C.L.R. (2d) 84 (C.A.)] . . . Such a decision may inevitably conflict with provincial legislation, but the broad purposes of the [*CCAA*] must be served" (*Pacific National Lease Holding*, at para. 28)." [underlining added, italics original].

Canada v Canada North Group Inc., 2021 SCC 30 at paras. 21, 31 per Côté J. (Wagner C.J. and Kasirer J. concurring) ("***Canada North***").

9. Justice Karakatsanis (Martin J. concurring) stated in *Canada North*:

> "[138] Due to its remedial nature, the *CCAA* is famously skeletal in nature (*Century Services*, at paras. 57-62). It does not "contain a comprehensive code that lays out all that is permitted or barred" (para. 57, quoting *Metcalfe & Mansfield Alternative Investments II Corp. (Re)*, 2008 ONCA 587, 92 O.R. (3d) 513, at para. 44, per Blair J.A.). Under s. 11, for example, the court may make any order that it considers appropriate in the circumstances, subject to the restrictions set out in the Act. Section 11 has been described as "the engine that drives this broad and flexible statutory scheme" (*Stelco Inc. (Re)* (2005), 2005 CanLII 8671 (ON CA), 75 O.R. (3d) 5 (C.A.), at para. 36; see also *9354-9186 Québec inc.*, at para. 48). Deschamps J. observed in *Century Services* that these discretionary grants of jurisdiction to the courts have been key in allowing the *CCAA* to adapt and evolve to meet contemporary business and social needs. Although judicial discretion must always be exercised in furtherance of the *CCAA's* remedial purpose, it takes many forms and has proven to be flexible, innovative, and necessary (paras. 58-61; *U.S. Steel Canada Inc.*, Re, 2016 ONCA 662, 402 D.L.R. (4th) 450, at para. 102).
>
> […]
>
> [171] In keeping with its broad language, s. 11 of the *CCAA* has been used to make a wide array of orders. Most recently, for example, this Court clarified that it can be used to bar a creditor from voting on a plan where the creditor has acted for an improper purpose (*9354-9186 Québec inc.*, at paras. 56 and 66).
>
> […]
>
> [176] While I agree that s. 11 is restricted by the provisions set out in the *CCAA* and cannot be used to violate specific provisions in the Act, s. 11 is not "restricted by the availability of more specific orders". […]
>
> [178] To that end, s. 11 of the *CCAA* gives the court discretion and flexibility to weigh several considerations in ranking a priming charge ahead of the Crown's deemed trust for unremitted source deductions. It requires the court to take a focused look at the specific facts of a case to determine whether such an order is necessary and appropriate. […]" [underlining added, italics original].

Canada North, *supra* at paras. 176, 178 per Karakatsanis J. (Martin J. concurring).

10. The Petitioners' Intended Claims are a material asset of the Petitioners. The resolution of such claims and seeking common ground on the restart of the Mill, in an efficient and expedient manner, will be to the benefit of all stakeholders. A negotiated settlement is preferable to litigation in the instant case. The Intended Claims would need to be dealt with in any event, whether consensually or otherwise. Litigation is lengthy and time-consuming, and the resolution of the

Petitioners' disputes with the Province is a necessary component of completing the Replacement ETF. Although there has been no progress in settlement discussions to date, that position may change after the parties mutually engage in discussions, in good faith, within the Mediation Process. In the circumstances, the Mediation Process will enhance the prospects of the Petitioners exiting these proceedings as a going concern to the benefit of all stakeholders, and accordingly the Mediation Process is appropriate in the circumstances.

11. The broad jurisdiction granted under section 11 of the CCAA has been utilized to approve mediation orders in a number of cases. Mediation orders approved by CCAA courts in recent proceedings, as set out in further detail below, share a number of commonalities with the proposed Mediation Order, including: (i) the appointment of an experienced mediator to assist with the resolution of the claims at issue; (ii) the establishment of confidentiality and privilege provisions to ensure parties may freely negotiate in private, without fear that their negotiating positions will be used against them if negotiations ultimately fail; (iii) significant flexibility granted to the court-appointed mediator to determine their own process, including the ability to retain counsel and other advisors as may be deemed necessary; and, (iv) the authority for the mediator to consult with creditors, the court-appointed monitor, and other stakeholders, to facilitate a settlement of the matters at issue.

12. For instance, mediation orders were approved in the following proceedings: (i) *Canadian Red Cross Society*; (ii) *Nortel Networks Corporation (Re)*; (iii) *Laurentian University of Sudbury*; (iv) *CannTrust Holdings Inc. et al*; (v) *Rothmans, Benson & Hedges Inc.*; (vi) *Imperial Tobacco Canada Limited et al.*; and, (vii) *JTI-Macdonald Corp*.

Canadian Red Cross Society / Société Canadienne de la Croix Rouge, Re, 19 CBR (4th) 158, 2000 CanLII 22488 (ONSC) at para. 9;
Nortel Networks Corporation (Re), 2011 ONSC 4012 at paras. 18 - 25;
In the Matter of A Plan of Compromise or Arrangement of Laurentian University of Sudbury, ONSC (Comm. List) File No. CV-21-00656040-00CL, Order (Re: Appointment of Mediator), granted on February 5, 2021 by the Hon. Morawetz J.;
In the Matter of A Plan of Compromise or Arrangement of CannTrust Holdings Inc. et al, ONSC (Comm. List) File No. CV-20-00638930-00CL, Mediation Order, granted on May 8, 2020 by the Hon. Hainey J.;
In the Matter of A Plan of Compromise or Arrangement of Rothmans, Benson & Hedges Inc., ONSC (Comm. List) File No. CV-19-616779-00CL, Second Amended and Restated Initial Order, granted on April 25, 2019, by the Hon. McEwen J.;
In the Matter of A Plan of Compromise or Arrangement of Imperial Tobacco Canada Limited et al., ONSC (Comm. List) File No. CV-19-616077-00CL, Second Amended and Restated Initial Order, granted on March 12, 2019, by the Hon. McEwen J.;
In the Matter of A Plan of Compromise or Arrangement of JTI-Macdonald Corp., ONSC (Comm.

List) File No. CV-19-615862-00CL, Second Amended and Restated Initial Order, granted on March 8, 2019, by the Hon. McEwen J.

13. Decisions issued under the CCAA with respect to dispute resolution issues have similarly concluded that a supervising court has jurisdiction to order the process and forum by which claims will be determined or otherwise dealt with. For instance, in *Hayes Forest Services Limited (Re)*, the Court considered whether the mandatory dispute resolution provisions of the *Forest Act* (British Columbia) could be overruled by virtue of the CCAA. Justice Burnyeat concluded as follows with respect to section 11(4) of the CCAA, as it then was:

> "In *Luscar*, *supra*, the Court dealt with the issue of whether a judge had the discretion under the CCAA to establish a procedure for resolving a dispute between the parties who had previously agreed under a contract to arbitrate their disputes. The question before the Court was whether the dispute should be resolved as part of the "supervisory role of the reorganization" of the company under the CCAA or whether the Court should stay the proceedings while the dispute was resolved by an arbitrator. The decision of the Learned Chambers Judge was that the dispute should be resolved as expeditiously as possible by the Court of Queen's Bench under the CCAA proceedings. […]
>
> I agree that the language of s. 11(4) of the CCAA is broad enough to allow this Court to substitute a decision in these proceedings for the arbitration process contemplated under the Contract. In this regard, see also the decision in *Landawn Shopping Centers Ltd. v. Harzena Holdings Ltd.* (1997), 44 O.T.C. 288 (Ont. G.D.) where the Court allowed the arbitration stipulated under a contract to be replaced by a claim of the landlord being dealt with by the Court under the terms of a plan of arrangement."

Hayes Forest Services Limited (Re), 2009 BCSC 1169 at paras. 23, 25.

14. The Petitioners submit that the appointment of the Court-Appointed Mediator is appropriate in the circumstances and will advance the remedial purposes of the CCAA. The Petitioners have consistently indicated that a successful resolution to these CCAA Proceedings will require not only the completion of a Replacement ETF, but also a resolution of the Petitioners' claims against the Province. The Mediation Process, as proposed, will create a framework within which the Province and the Petitioners may negotiate and settle any and all claims between them, under the supervision of a highly-qualified and experienced mediator and the ultimate authority of this Court.

15. The proposed Mediation Process is the best available means of ensuring that "participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit", given the lack of progress in the Petitioners' attempts to pursue settlement

discussions to date. If it successful, the Mediation Process will likely result in a more expedient determination of the Mediation Claims than would occur if the parties were to engage in protracted litigation. To the extent that the proposed Mediation Process will affect the rights of third parties, there is a clear jurisdiction to grant the order sought, and no prejudice to such persons as the Mediation Order does not compromise or impair claims should the Mediation Process fail.

Century Services, *supra* at para. 70.

B. Tolling

Jurisdiction to Toll

16. The Mediation Order sought by the Petitioners includes certain Tolling Provisions . The jurisdiction to grant an order tolling and suspending all filing deadlines, requirements to take steps, and other time prescriptions with respect to a claim arises pursuant to section 11, and is analogous to the jurisdiction to toll limitation periods. It is well-established that the CCAA provides jurisdiction to suspend or toll limitations periods and deadlines, including under statutes and rules of procedure, with respect to claims by or against a debtor company.

17. In *JTI-Macdonald Corp.*, *Imperial Tobacco Canada Limited, Rothmans, Benson & Hedges Inc. et al. (Re)* ("***Tobacco (Re)***"), McEwen J. considered an application under section 11 of the CCAA, that sought to extend the 60-day limitation period for leave applications to the Supreme Court of Canada. Upon examining the policy purpose of the CCAA, and the broad jurisdiction granted pursuant to section 11 of the CCAA to restrain further proceedings in "any action, suit or proceeding" against the debtor companies, the Court concluded that section 11 jurisdiction is sufficiently broad to suspend the period within which an appeal must be filed.

In The Matter of the Companies' Creditors Arrangement Act, 2019 ONSC 2222, at paras. 17 - 18 ("***Tobacco (Re)***").

18. Specifically, section 11 of the CCAA "…provides this court with jurisdiction to deal with proceedings other than those that simply arise before the Ontario Superior Court of Justice…" and "…jurisdiction to extend any prescription, time or limitation period relating to any proceeding for or against the applicants or related entities that may expire..." [emphasis added].

Tobacco (Re), *supra* at paras. 19, 27; see also *Muscletech Research and Development Inc. (Re)*, 2006 CanLII 20084 (Ont. S.C.J.), at

para. 5;

ScoZinc Ltd. (Re), 2009 NSSC 162, 277 N.S.R. (2d) 246 (Claims Officer), at para. 5;

Scaffold Connection Corp. (Re), [2000] A.J. No. 69, 79 Alta. L.R. (3d) 144, at para. 26;

Carillion Canada Holdings Inc. (Re), 2022 ONSC 66, at paras. 23 and 28.

19. A court exercising its supervisory jurisdiction under the CCAA may override express provincial statutory or regulatory provisions, provided that doing so contributes to the restructuring and the court is exercising its "protective function". For instance:

(a) In *Air Canada (Re)*, the supervising court determined that its discretionary jurisdiction included the ability to impose a stay on federal regulators, so long as "…that discretion is to be judicially exercised according to the circumstances applicable in any particular case…";

(b) In *Collins & Aikman Automotive Canada Inc. (Re)* ("***Collins & Aikman***"), the supervising court dismissed an application by, *inter alios*, pension regulators seeking to amend a stay of proceedings to require the debtor company to comply with its statutory pension obligations. The Court concluded that "…the Court has a jurisdiction under the CCAA which […] "can be used to override an express provincial statutory provision" where that would contribute to carrying out the protective function of the CCAA as reflected particularly in the provisions of s. 11 of the CCAA."; and,

(c) In *Loewen Group Inc., Re*, the supervising court determined that the doctrine of paramountcy applied to render inoperative provisions of the *Company Act*, R.S.B.C. 1996, c. 62 which would require mandatory shareholder approval, "…[which would] defeat the purpose of Loewen's bankruptcy reorganization because it would give shareholders, who have no economic interest to protect, a right to veto and potentially extract an economic benefit."

Air Canada (Re), [2003] O.J. No. 6254, 28 C.B.R. (5th) 52 (S.C.J. Comm. List), at para. 12; see also para. 14;

Collins & Aikman Automotive Canada Inc. (Re), 37 CBR (5th) 282, 2007 CanLII 45908 (ON SC) at para. 42, citing *Sulphur Corp. of Canada Ltd. (Re)*, 2002 ABQB 682 (CanLII), [2002] 35 C.B.R. (4th) 304 (Alta. Q.B.) at para. 37;

Loewen Group Inc., Re, 32 CBR (4th) 54, 2001 CanlII 28285 (ONSC Comm. List) at para. 14(c); see also paras. 10 - 13.

20. The Petitioners submit that suspending or tolling the time periods and other deadlines applicable to the Mediation Claims during the course of the Mediation Process will materially contribute to the restructuring and falls within the "protective purpose" of the CCAA as described in the *Collins & Aikman* decision. A tolling order will permit the Petitioners and the Province to focus on the Mediation Process without the distraction of ongoing filing deadlines within the litigation, or the publicity associated with steps taken, which might distract from the prospects of a successful mediation. All such claims will be preserved in the event that the Mediation Process fails to produce a settlement, obviating any potential prejudice to the respective plaintiffs. Regarding the Intended Claims, specifically, there is no prejudice to the Province as a result of such tolling given that the Petitioners have already filed the Statement of Claim. The Province will benefit from the suspension of any time periods applicable to the filing of its defence, should it wish to.

The Tolling Provisions Will Be Effective In Nova Scotia

21. Sections 16 and 17 of the CCAA state:

> "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.
>
> 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."

CCAA, *supra* at ss. 16, 17.

22. CCAA courts have consistently interpreted section 16 at face value: an order issued in one province is enforceable in any other province and has full force and effect across Canada. It

is not necessary to seek recognition of an order granted under the CCAA; the order automatically has binding effect on other courts in the same manner as if they had made the order themselves.

Yukon Zinc Corporation (Re), 2015 BCSC 836 (CanLII), at para. 71;
Canadian Red Cross Society (Re), 1998 CanLII 6284 (BC SC), at para 31;
Desjardins Financial Services Firm Inc. v. Asselin, 2020 SCC 30, at para. 275 per Côté J., Moldaver and Rowe JJ. concurring (dissenting in part, but not on this issue: see para. 149 per Kasirer J., Wagner C.J. and Abella, Karakatsanis, Brown and Martin JJ. concurring).

23. Accordingly, there is nothing preventing this Court from issuing a tolling order that is intended to take effect in Nova Scotia.

C. Third-Party Relief

24. The Petitioners seek the extension of the Tolling Provisions to the non-Petitioner Mediation Parties and the inclusion of third parties in the Mediation Process. The extension of an order made under the CCAA to non-debtor parties also falls within this Court's jurisdiction pursuant to section 11 of the CCAA.

25. In *Lehndorff General Partner (Re)*, the stay of proceedings pursuant to section 11 of the CCAA was extended to apply to certain limited partnership related to the debtor companies, notwithstanding that the partnerships were not "companies" and did not fall within the express provisions of the CCAA. The Court relied upon its inherent jurisdiction to extend the stay of proceedings, holding that "…it would be just and reasonable to do so. The business operations of the applicants are so intertwined with the limited partnerships that it would be impossible for relief as to a stay to be granted to the applicants which would affect their business without at the same time extending that stay to the undivided interests of the limited partners in such."

Lehndorff General Partner (Re), 1993 CarswellOnt 183 at paras. 12, 21.

26. The *Lehndorff* decision has since been applied to extend the stay of proceedings to various other third parties, including, among others, the insurers of debtor companies and general partners related to the debtors' business and operations. Provided that it is "just and reasonable" to do so, the authority under section 11.02(1) of the CCAA is sufficiently broad to support a stay of proceedings against persons other than the debtor companies, where a stay is necessary or appropriate to facilitate the restructuring of the debtor companies.

Re 4519922 Canada Inc., 2015 ONSC 124 at paras. 70 - 72;
Montreal, Maine & Atlantic Canada Co. (Re), 2013 QCCS 3777 at para. 7;
Canwest Publishing Inc./Publications Canwest Inc., Re, 2010 ONSC 222 at paras. 1, 33 - 34;
Miniso International Hong Kong Limited v Migu Investments Inc., 2019 BCSC 1234 at paras. 57 - 62.

27. In *Cinram International Inc., Re*, Morawetz J. set out the following non-exhaustive list of factors to be considered in determining whether a third-party stay is appropriate:

> "[64] The Courts have found it just and reasonable to grant a stay of proceedings against third party non-applicants in a number of circumstances, including:
>
> a. where it is important to the reorganization process;
>
> b. where the business operations of the Applicants and the third party non-applicants are intertwined and the third parties are not subject to the jurisdiction of the CCAA (such as partnerships that are not "companies" under the CCAA);
>
> c. against non-applicant subsidiaries of a debtor company where such subsidiaries were guarantors under the note indentures issued by the debtor company; and
>
> d. against non-applicant subsidiaries relating to any guarantee, contribution or indemnity obligation, liability or claim in respect of obligations and claims against the debtor companies."

Cinram International Inc. (Re), 2012 ONSC 3767, at para. 64.

28. In *Target Canada Co. (Re)*, the stay of proceedings against the debtor companies was extended to apply to prevent the exercise of rights by certain co-tenants against the debtor companies' landlords, which might otherwise occur as a result of the CCAA filing. In extending the stay to such third parties, Morawetz J. stated:

> "[44] The Applicants also seek landlord protection in relation to third party tenants. Many retail leases of non-anchored tenants provide that tenants have certain rights against their landlords if the anchor tenant in a particular shopping mall or centre becomes insolvent or ceases operations. In order to alleviate the prejudice to TCC's landlords if any such non-anchored tenants attempt to exercise these rights, the Applicants request an extension of the stay of proceedings (the "Co-Tenancy Stay") to all rights of these third party tenants against the landlords that arise out of the insolvency of the Target Canada Entities or as a result of any steps taken by the Target Canada Entities pursuant to the Initial Order.
>
> [45] The Applicants contend that the authority to grant the Co-Tenancy Stay derives from the broad jurisdiction under sections 11 and 11.02(1) of the CCAA to

> make an initial order on any terms that the court may impose. Counsel references *Re T. Eaton Co.*, 1997 CarswellOnt 1914 (Gen. Div.) as a precedent where a stay of proceedings of the same nature as the Co-Tenancy Stay was granted by the court in Eaton's second CCAA proceeding. The Court noted that, if tenants were permitted to exercise these "co-tenancy" rights during the stay, the claims of the landlord against the debtor company would greatly increase, with a potentially detrimental impact on the restructuring efforts of the debtor company.
>
> [46] In these proceedings, the Target Canada Entities propose, as part of the orderly wind-down of their businesses, to engage a financial advisor and a real estate advisor with a view to implementing a sales process for some or all of its real estate portfolio. The Applicants submit that it is premature to determine whether this process will be successful, whether any leases will be conveyed to third party purchasers for value and whether the Target Canada Entities can successfully develop and implement a plan that their stakeholders, including their landlords, will accept. The Applicants further contend that while this process is being resolved and the orderly wind-down is underway, the Co-Tenancy Stay is required to postpone the contractual rights of these tenants for a finite period. The Applicants contend that any prejudice to the third party tenants' clients is significantly outweighed by the benefits of the Co-Tenancy Stay to all of the stakeholders of the Target Canada Entities during the wind-down period. […]
>
> [48] I am satisfied the Court has the jurisdiction to grant such a stay. In my view, it is appropriate to preserve the status quo at this time. […]"

Target Canada Co. (Re), 2015 ONSC 303 at paras. 44 - 46, 48 ("***Target***").

29. In the circumstances, the extension of the proposed order to the non-Petitioner Mediation Parties fits within the first factor identified in *Cinram*: it is important to the reorganization process. PEC and Hervey's claims are intertwined with the claims of the Petitioners, and will be resolved at the same time and in the same forum. The participation of the Mediation Parties in the Mediation Process will avoid: (i) a multiplicity of proceedings; (ii) the possibility of partial or unresolved matters after an otherwise-global settlement; and, (iii) additional costs and duplicative work. As in *Target*, any prejudice to the Mediation Parties is significantly outweighed by the benefits of the Tolling Provisions.

Cinram, *supra* at para. 64(a);
Target, *supra* at paras. 46, 48.

30. Accordingly, the Petitioners submit that it is just and appropriate to extend the Tolling Provisions to the non-Petitioner Mediation Parties, to give the Petitioners the best available opportunity to achieve a global settlement as a crucial component of their restructuring. Any potential prejudice to the Province or any other party is minimized as, in any event, it would need to respond to such claims (whether by way of mitigation or mediation), and the order sought does

not compromise or otherwise impair any claims or defences. It simply maintains the *status quo* while the Mediation Process continues.

D. Court-Appointed Mediator's Fees

31. The Petitioners seek approval to pay the fees and disbursements of the Court-Appointed Mediator, the Court-Appointed Mediator's counsel and other advisors, from time to time, as billed in accordance with the Court-Appointed Mediator's standard billing practices.

PART IV - MATERIAL TO BE RELIED ON

1. Affidavit #1 of Bruce Chapman, sworn June 16, 2020;

2. Affidavit #10 of Bruce Chapman, sworn October 15, 2021;

3. Affidavit #11 of Bruce Chapman, sworn February 3, 2022;

4. Eighth Report of the Monitor, dated October 26, 2021;

5. Ninth Report of the Monitor, to be filed; and,

6. Such further and other materials as counsel may advise and this Court may permit.

The applicants estimate that the application will take one (1) full day.

This matter is not within the jurisdiction of a master. The Honourable Justice Fitzpatrick is seized of this matter and it has been booked through Trial Scheduling.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application:

(a) file an Application Response in Form 33

(b) file the original of every affidavit, and of every other document, that

a) you intend to refer to at the hearing of this application, and

b) has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

a) a copy of the filed application response;

b) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

c) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

DATED: February 4, 2022

McCarthy Tétrault LLP
(H Lance Williams and Sean Collins)
Counsel for the Petitioners

To be completed by the court only:

Order made

[ ] in the terms requested in paragraphs …….
of Part 1 of this Notice of Application

[ ] with the following variations and additional terms:

……..……
……
……
……
……
……..
……..
……..
……..
……..
……..

DATED: _____ _____
Signature of [ ] Judge
[ ] Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

[ ] discovery: comply with demand for documents

[ ] discovery: production of additional documents

[ ] other matters concerning document discovery

[ ] extend oral discovery

[ ] other matter concerning oral discovery

[ ] amend pleadings

[ ] add/change parties

[ ] summary judgment

[ ] summary trial

[ ] service

[ ] mediation

[ ] adjournments

[ ] proceedings at trial

[ ] case plan orders: amend

[ ] case plan orders: other

[ ] experts

[X] none of the above

SCHEDULE "A"

No. S206189
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1057863 B.C. LTD., NORTHERN RESOURCES NOVA SCOTIA CORPORATION, NORTHERN PULP NOVA SCOTIA CORPORATION, NORTHERN TIMBER NOVA SCOTIA CORPORATION, 3253527 NOVA SCOTIA LIMITED, 3243722 NOVA SCOTIA LIMITED, and NORTHERN PULP NS GP ULC,

PETITIONERS

SERVICE LIST
As at November 26, 2021

McCarthy Tétrault LLP 745 Thurlow Street, Suite 2400 Vancouver, BC V6E 0C5 **Attention:** **Michael Feder, Q.C.** **Sean Collins** **Walker MacLeod** **Lance Williams** **Forrest Finn** E-mail: mfeder@mccarthy.ca scollins@mccarthy.ca wmacleod@mccarthy.ca lwilliams@mccarthy.ca ffinn@mccarthy.ca *Counsel to the Petitioners*	Mehigan LLP Suite 4408A, 44th Floor COSCO Tower 183 Queen's Road Central Hong Kong **Attention:** **Bertie Mehigan** **Darinne Ko** **Daniel Lee Wai Yong** **Yong Shi Kai** E-mail: bmehigan@mehiganllp.com dko@mehiganllp.com dlee@mehiganllp.com skyong@mehiganllp.com *International Restructuring Counsel to the Petitioners*
McInnes Cooper 1969 Upper Water St., Suite 1300 McInnes Cooper Tower - Purdy's Wharf Halifax, NS B3J 3R7 **Attention:** **John Roberts** Email: john.roberts@mcinnescooper.com	

Ernst & Young Inc. **Monitor of the Petitioners** Pacific Centre 700 West Georgia Street Vancouver, BC V7Y 1C7 **Attention:** **Kevin B. Brennan** **George Kinsman** **Holly Palmer** E-mail: Kevin.B.Brennan@parthenon.ey.com George.C.Kinsman@parthenon.ey.com Holly.Palmer@parthenon.ey.com Fax: 604-643-5422 *Court-Appointed Monitor*	Stikeman Elliott LLP 5300 Commerce Court West 199 Bay Street Toronto, ON M5L 1B9 **Attention:** **Ashley John Taylor** **Elizabeth Pillon** **Lee Nicholson** E-Mail: ataylor@stikeman.com lpillon@stikeman.com leenicholson@stikeman.com Tel: 416 869-5623 Fax: 416 947 0866 *Counsel to the Court-Appointed Monitor*
Nathanson Schachter & Thompson LLP 750 – 900 Howe Street Vancouver, BC V6Z 2M4 **Attention:** **Peter J. Reardon** E-mail: preardon@nst.bc.ca rpearson@nst.ca *Counsel to Paper Excellence Canada Holdings Corporation*	Stewart McKelvey Queen's Marque 600-1741 Lower Water Street Halifax, NS B3J 0J2 **Attention:** **Robert Grant, Q.C.** **Maurice Chiasson, Q.C.** E-mail: rgrant@stewartmckelvey.com mchiasson@stewartmckelvey.com Tel: 902 420-3328 *Counsel to the Province of Nova Scotia*
Chernos Flaherty Svonkin LLP 220 Bay Street, Suite 700 Toronto, Ontario M5J 2W4 **Attention:** **Patrick Flaherty** **Brendan Brammall** Email: PFlaherty@cfscounsel.com BBrammall@cfscounsel.com *Counsel to the DIP Financier*	Unifor 205 Placer Court Toronto, ON M2H 3H9 **Attention:** **Anthony F. Dale** Email: Anthony.Dale@unifor.org *Counsel to Unifor and its local unions that represent the employees of Northern Pulp and/or the other petitioners in Nova Scotia*

Pink Larkin Suite 201, 1463 South Park Street PO Box 36036 Halifax, NS B3J 3S9 **Attention: Ronald A. Pink** Email: rpink@pinklarkin.com *Counsel to Unifor Local 440*	Boyneclarke LLP 99 Wyse Road, Suite 600 P.O. Box 876, Dartmouth Main Halifax Regional Municipality, NS B2Y 3Z5 **Attention: Tim Hill, Q.C.** Email: thill@boyneclarke.ca *Counsel for Heritage Gas Limited*
Nova Scotia Department of Justice 1690 Hollis St, 8th Floor PO Box 7 Halifax, NS B3J 3J9 **Attention: Jeremy P. Smith** Email: Jeremy.Smith@novascotia.ca *Counsel to the Superintendent of Pensions*	Praxair Canada Inc. 1 City Centre Drive, Suite 1200 Mississauga, ON L5B 1M2 **Attention: Sheryl E. Nisenbaum, Director of Legal Affairs** **Sophie C. Traub, Assistant Director of Legal Affairs** Email: sheryl_nisenbaum@praxair.com sophie_traub@praxair.com Fax: 905-803-1716
Whiteley Litigation 310 Stouffville Road Richmond Hill, ON L4E 3P4 **Attention: Heath P.L. Whiteley** Email: heath@whiteleylitigation.com Tel: 905 773-7700 Fax: 905 773-7666 *Counsel to Terrapure Environmental*	Davies Ward Phillips & Vineberg LLP 155 Wellington Street West Toronto ON M5V 3J7 **Attention: Natasha MacParland** **Gillian Stacey** Email: nmacparland@dwpv.com gstacey@dwpv.com *Counsel to Atlas Holdings LLC and Blue Wolf Capital Management, LLC*

McKiggan Hebert Lawyers 502-1959 Upper Water Street Halifax, NS B3J 3N2 **Attention: Brian J. Hebert** Email: bhebert@mckigganhebert.com *Counsel to PLFN*	Cassels Brock & Blackwell LLP Suite 2200, HSBC Building 855 West Georgia St. Vancouver, BC V6C 3E8 **Attention: Mary I.A. Buttery** **Jared Enns** **Sue Danielisz** Email: mbuttery@cassels.com jenns@cassels.com sdanielisz@cassels.com Tel: 604 691 6118 Fax: 604 691 6120 *Counsel to J.D. Irving*
Stewart McKelvey Queen's Marque 600-1741 Lower Water Street Halifax, NS B3J 0J2 **Attention: Robert G. MacKeigan, Q.C.** E-mail: robbie@stewartmckelvey.com Tel: 902 444 1771 Fax: 902 420 1417 *Counsel to Higgins Mountain Wind Farm General Partner Inc.*	Blake, Cassels & Graydon LLP Suite 2600 – 595 Burrard Street Vancouver, BC V7X 1L3 **Attention: Claire Hildebrand** **Peter Bychawski** Email: claire.hildebrand@blakes.com peter.bychawski@blakes.com Tel: 604 631 3331 Fax: 604 631 3309 *Counsel to Komatsu*

EMAIL SERVICE LIST

mfeder@mccarthy.ca; scollins@mccarthy.ca; wmacleod@mccarthy.ca; lwilliams@mccarthy.ca; ffinn@mccarthy.ca; john.roberts@mcinnescooper.com; bmehigan@mehiganllp.com; dko@mehiganllp.com; dlee@mehiganllp.com; skyong@mehiganllp.com; Kevin.B.Brennan@parthenon.ey.com; George.C.Kinsman@parthenon.ey.com; Holly.Palmer@parthenon.ey.com; ataylor@stikeman.com; lpillon@stikeman.com; leenicholson@stikeman.com; preardon@nst.bc.ca; rpearson@nst.ca; rgrant@stewartmckelvey.com; mchiasson@stewartmckelvey.com; PFlaherty@cfscounsel.com; BBrammall@cfscounsel.com; Anthony.Dale@unifor.org; rpink@pinklarkin.com; thill@boyneclarke.ca; Jeremy.Smith@novascotia.ca; sheryl_nisenbaum@praxair.com; sophie_traub@praxair.com; heath@whiteleylitigation.com; nmacparland@dwpv.com; gstacey@dwpv.com; bhebert@mckigganhebert.com; mbuttery@cassels.com; jenns@cassels.com; sdanielisz@cassels.com; robbie@stewartmckelvey.com; claire.hildebrand@blakes.com; peter.bychawski@blakes.com

SCHEDULE "B"

No. S-206189

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1057863 B.C. LTD., NORTHERN RESOURCES NOVA SCOTIA CORPORATION, NORTHERN PULP NOVA SCOTIA CORPORATION, NORTHERN TIMBER NOVA SCOTIA CORPORATION, 3253527 NOVA SCOTIA LIMITED, 3243722 NOVA SCOTIA LIMITED and NORTHERN PULP NS GP ULC

PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE	THE HONOURABLE MADAM JUSTICE FITZPATRICK	THURSDAY, THE 31st DAY OF MARCH, 2022

ON THE APPLICATION of the Petitioners coming on for hearing by video conference at Vancouver, British Columbia on the 31st day of March, 2022; AND ON HEARING ●, counsel for the Petitioners, and those other counsel listed on Schedule "**A**" hereto; AND UPON READING the material filed, including the Tenth Affidavit of Bruce Chapman sworn October 18, 2021, the Eleventh Affidavit of Bruce Chapman, sworn February 3, 2022 (the "**Eleventh Chapman Affidavit**"), and the Ninth Report of Ernst & Young Inc., in its capacity as court-appointed monitor (the "**Monitor**") of the Petitioners, dated ●; AND pursuant to the *Companies' Creditors Arrangement Act,* R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES that:

DEFINED TERMS

1. In this Order, the following terms shall be ascribed the following meanings:

   (a) "**Action**" means the action to be commenced by the Petitioners, Hervey, and PEC, against the Province, in the Supreme Court of Nova Scotia pursuant to the Statement of Claim, as described in the Eleventh Chapman Affidavit;

   (b) "**BH-ETF**" means the Boat Harbour Effluent Treatment Facility;

   (c) "**Court-Appointed Mediator**" means the Honourable Thomas Cromwell, C.C.;

   (d) "**Hervey**" means Hervey Investment BV (Netherlands);

   (e) "**Intended Claims**" means those claims as set out in the Statement of Claim and the Notice of Intended Action;

   (f) "**Mediation Claims**" means, collectively, (i) the Intended Claims; and (ii) any such other claims of whatever nature or kind that the Court-Appointed Mediator, in consultation with the Mediation Parties, determines should be subject to the Mediation Process;

   (g) "**Mediation Parties**" means, collectively, the Province, the Petitioners, PEC, Hervey, and all Persons engaged in the Mediation Process from time to time and "**Mediation Party**" means any one of them. For greater certainty, the Monitor shall not be a Mediation Party notwithstanding its participation in or engagement with the Mediation Process;

   (a) "**Mediation Process**" has the meaning given to it in paragraph 2 of this Order;

   (b) "**Mill**" means the Petitioners' pulp mill located in Pictou County, Nova Scotia;

   (c) "**Monitor**" means Ernst & Young Inc., in its capacity as the court-appointed monitor of the Petitioners;

(d) "**Notice of Intended Action**" means the Notice of Intended Action served by the Petitioners and others on the Province on or about October 14, 2021 pursuant to the *Proceedings Against the Crown Act*, RSNS 1989, c. 360;

(e) "**PEC**" means Paper Excellence Canada Holdings Corporation;

(f) "**Person**" means any individual, corporation, firm, limited or unlimited liability company, general or limited partnership, cooperative society or cooperative organization, association (incorporated or unincorporated), trust, unincorporated organization, joint venture, trade union, government authority or any agency, regulatory body or officer thereof or any other entity, wherever situate or domiciled, and whether or not having legal status, and whether acting on their own or in a representative capacity, and includes the successors, heir, executors, liquidators, administrators or other representatives of any of the aforementioned and includes, without limitation, Pictou Landing First Nation;

(g) "**Province**" means the Attorney General of Nova Scotia representing Her Majesty the Queen in right of the Province of Nova Scotia;

(h) "**Statement of Claim**" means the Statement of Claim of, among others, the Petitioners, filed in the Nova Scotia Supreme Court on or about December 16, 2021 against the Province.

MEDIATION PROCESS

2. The Court-Appointed Mediator is hereby appointed as an officer of the Court in accordance with the consent attached to the Eleventh Chapman Affidavit, and shall act as a neutral third party to mediate a settlement of the Mediation Claims between the Petitioners, the Province, Hervey, PEC, and any other Person who becomes a Mediation Party pursuant to the terms of this Order (the "**Mediation Process**"). Participation in the Mediation Process shall be mandatory for all Mediation Parties.

3. In carrying out his mandate, the Court-Appointed Mediator may, among other things:

(a) Adopt processes, procedures and timelines which, in his discretion, he considers appropriate to facilitate the negotiation of a settlement of the Mediation Claims;

(b) Facilitate and permit the participation of any Person in the Mediation Process as a Mediation Party provided that such Person's participation, in the discretion of the Court-Appointed Mediator, is necessary or desirable for the resolution of the Mediation Claims. For greater certainty, (i) the Monitor is authorized and directed to assist the Court-Appointed Mediator in identifying appropriate Mediation Parties; and, (ii) the participation in the Mediation Process of any Person identified by the Court-Appointed Mediator shall be mandatory unless this Court orders otherwise;

(c) Retain independent legal counsel and such other advisors and Persons as the Court-Appointed Mediator considers necessary or desirable to assist him in carrying out his mandate, including, without limitation, financial advisors;

(d) Consult with all Mediation Parties, the Monitor, creditors and stakeholders of the Petitioners, and any other Persons the Court-Appointed Mediator considers appropriate;

(e) Apply to this Court for advice and directions as, in his discretion, the Court-Appointed Mediator deems necessary; and

(f) Take any other step or action that the Court-Appointed Mediator considers necessary or advisable to complete the Mediation Process.

4. The Court-Appointed Mediator is hereby authorized and empowered to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

5. The Monitor is hereby authorized and empowered to provide the Court-Appointed Mediator with such assistance as the Court-Appointed Mediator shall reasonably request.

6. All reasonable fees and disbursements of the Court-Appointed Mediator and his legal counsel and financial and other advisors as may have been incurred by them prior to the date of this Order with respect to the Mediation Process or which shall be incurred by them on or after the date of this Order in relation to the Mediation Process shall be paid by the Petitioners on a monthly basis (or such other basis as may be agreed to among the Petitioners, Court-Appointed Mediator and the Monitor), forthwith upon the rendering of accounts to the Petitioners.

7. In addition to the rights and protections afforded as an officer of this Court, the Court-Appointed Mediator shall not be liable to any Person whatsoever for any act or omission in connection with the Mediation Process, or incur any liability or obligation as a result of his appointment or the carrying out of the provisions of this Order, save and except for any fraud or wilful misconduct on his part. For greater certainty, the Court-Appointed Mediator shall have the same immunity as a Superior Court judge.

COMMUNICATION AND CONFIDENTIALITY PROTOCOL

8. The following communication and confidentiality protocol between the Court and the Court-Appointed Mediator is hereby approved:

   (a) The Court and the Court-Appointed Mediator may communicate between one another directly to discuss, on an ongoing basis and from time to time, the conduct of the Mediation Process and the manner in which it will be coordinated with the within CCAA proceedings,

   (b) The Court will not disclose to the Court-Appointed Mediator how the Court will decide any matter which may come before it for determination. The Court-Appointed Mediator will not disclose to the Court the negotiating positions or confidential information of any of the Parties in the Mediation Process;

   (c) All statements, discussions, offers made and documents produced by any of the Mediation Parties in the course of the Mediation Process: (i) shall, in addition to any privilege that attaches at law, be confidential; (ii) shall not be subject to disclosure through discovery or any other process by any other Mediation Party; and, (iii) shall not be referred to in Court and shall not be admissible into evidence for any purpose whatsoever, including impeaching credibility or to establish the meaning and/or validity of any settlement or alleged settlement arising from the Mediation Process. Nothing in (ii) or (iii) above shall limit the discovery obligations of any Mediation Party or the ability of the Petitioners to report on the Mediation Process to the Interim Lender (as defined in the Amended and Restated Initial Order pronounced August 6, 2020) and its counsel provided that the Interim Lender and its counsel have agreed to keep all such information confidential in accordance with the terms of this Order; and

(d) Any notes, records, statements made, discussions had and recollections of the Court-Appointed Mediator and/or his legal counsel or other advisors in conducting the Mediation Process shall be confidential and without prejudice and shall be protected from disclosure for all purposes in accordance with paragraph 8(c) of this Order, which shall apply *mutatis mutandis* to any such notes, records, statements, discussions and recollections.

TOLLING

9. All filing deadlines, requirements to take steps, time limitations and similar restrictions that apply to any Mediation Claims made by or against the Mediation Parties, including but not limited to any prescription of time whereby the Mediation Parties would be required to deliver pleadings, documents or any other materials, or present parties for discovery in the Action, but excluding any limitations governed by the *Limitation of Actions Act*, SNS 2014, c. 35 (or analogous statutes in any other jurisdiction), be and are hereby stayed and extended for the number of days equal to the duration of the Mediation Process plus ninety (90) days. For greater certainty, no Person who is a participant in any litigation proceedings relating to the Mediation claims shall plead or otherwise be entitled to any immunity from liability under any procedural limitation or any acquiescence, laches, or any similar type doctrines in relation to the Mediation Parties' reliance on this Order.

GENERAL

10. Any settlement agreement reached pursuant to the Mediation Process shall be binding upon the parties thereto subject to approval of this Court to the extent such settlement agreement affects the interests of any of the Petitioners.

11. Each of the Petitioners, the Monitor, the Court-Appointed Mediator, and any Mediation Party be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

12. Any interested party (including, for certainty, any Mediation Party) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the

Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

13. Any interested party may apply to this Court to seek advice and directions with respect to the Mediation Process or any matter arising in connection with the Mediation Process, on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

14. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

THIS COURT REQUESTS the aid and recognition of other Canadian and foreign courts, tribunals, regulatory or administrative bodies, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners, and to the Monitor and the Mediator as officers of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Petitioners, the Mediator and the Monitor and their respective agents in carrying out the terms of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

McCarthy Tétrault LLP
(H. Lance Williams and Sean Collins)
Counsel for the Petitioners

BY THE COURT

REGISTRAR

SCHEDULE “A”

(LIST OF COUNSEL)

Counsel Name	**Appearing For**

NO. S-206189
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1057863 B.C. LTD., NORTHERN RESOURCES NOVA SCOTIA CORPORATION, NORTHERN PULP NOVA SCOTIA CORPORATION, NORTHERN TIMBER NOVA SCOTIA CORPORATION, 3253527 NOVA SCOTIA LIMITED, 3243722 NOVA SCOTIA LIMITED and NORTHERN PULP NS GP ULC

PETITIONERS

ORDER

McCarthy Tétrault LLP
Attention: H. Lance Williams and Sean Collins
Suite 2400, 745 Thurlow Street
Vancouver, BC V6E 0C5
Phone: (604) 643-7100
Fax: (604) 643-7900