

~~No~~NO. S-206189

~~Vancouver Registry~~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) THURSDAY, THE 31ST DAY
)
MADAM JUSTICE FITZPATRICK) OF MARCH, 2022

~~BEFORE~~) ~~THE HONOURABLE MADAM JUSTICE~~) ~~THURSDAY, THE 31st~~
) ~~FITZPATRICK~~) ~~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**

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, as Action Halifax No. 511473;
 - (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 by or against the Petitioners of whatever nature or kind that the Court-Appointed Mediator, in consultation with the Mediation Parties, determines should be subject to the Mediation Process provided that no environmental regulatory approval proceedings, including any judicial review or appeal thereof, shall be designated Mediation Claims;
 - (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;
 - (h) ~~(a)~~ **“Mediation Process”** has the meaning given to it in paragraph 2 of this Order;
 - (i) ~~(b)~~ **“Mill”** means the Petitioners’ pulp mill located in Pictou County, Nova Scotia;

- (j) ~~(e)~~ “**Monitor**” means Ernst & Young Inc., in its capacity as the court-appointed monitor of the Petitioners;
- (k) ~~(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;
- (l) ~~(e)~~ “**PEC**” means Paper Excellence Canada Holdings Corporation;
- (m) ~~(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;
- (n) “**PLFN Action**” means [the action commenced by Pictou Landing First Nation against, *inter alios*, the Province and Northern Pulp Nova Scotia Corporation in the Supreme Court of Nova Scotia as action Halifax No. 335700;](#)
- (o) ~~(g)~~ “**Province**” means the Attorney General of Nova Scotia representing Her Majesty the Queen in right of the Province of Nova Scotia;
- (p) ~~(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, [as Action Halifax No. 511473.](#)

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~~empowered 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; and (iii) the Court-Appointed Mediator shall notify in writing any party designated a Mediation Party;
 - (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~~shall 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 98(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~~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 and further provided that, should the PLFN

Action be designated a Mediation Claim, this section 9 shall not apply as between PLFN and any parties other than the Petitioners, PEC and Hervey (as applicable).

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:

~~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:~~

~~BY THE COURT~~

Signature of Lawyer for the Petitioners
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 <u>Party Represented</u>

|

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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

ORDER

McCarthy Tétrault LLP
~~Attention: H. Lance Williams and Sean Collins~~
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Attention: H. Lance Williams and Sean Collins

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