



Case File No. **CA48246**

Court of Appeal File No.

Supreme Court File No. S – 206189

Supreme Court Registry Vancouver

COURT OF APPEAL FOR 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

Between:

**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**

Respondents
(Petitioners)

-and-

**THE ATTORNEY GENERAL OF NOVA SCOTIA representing HER
MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA
SCOTIA**

Appellant
(Respondent)

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

Take notice that The Attorney General of Nova Scotia hereby applies for leave to appeal to the Court of Appeal for British Columbia from the order of Madam Justice Fitzpatrick of the Supreme Court of British Columbia pronounced the 1st day of April, 2022, at Vancouver, British Columbia.

1. The appeal is from a:
 - Trial Judgment Summary Trial Judgment
 - Order of a Statutory Body Chambers Judgment

2. If the appeal is from an appeal under Rule 18-3 or 23-6 (8) of the Supreme Court Civil Rules or Rule 18-3 or 22-7 (8) of the Supreme Court Family Rules, name the maker of the original decision, direction or order: N/A

3. Please identify which of the following is involved in the appeal:
 - Constitutional/Administrative Civil Procedure Commercial
 - Family Motor Vehicle Accidents Municipal Law
 - Real Property Torts Equity
 - Wills and Estates

And further take notice that the Court of Appeal will be moved at the hearing of this application for an Order that the Appellant be granted leave to appeal from the Order of Madam Justice Fitzpatrick of the Supreme Court of British Columbia pronounced the 1st day of April, 2022, which requires the Appellant to participate in non-binding mandatory mediation in relation to a claim for damages commenced by the Respondents in the Nova Scotia Supreme Court.

The Grounds of Appeal to be advanced by the Appellant are:

The Order requiring the Appellant to participate in mandatory mediation of the claims filed in the Nova Scotia Supreme Court was not an appropriate or reasonable exercise of discretion pursuant to s.11 of *Companies Creditors Arrangement Act* ("CCAA") and constitutes an error of law and fact, as:

1. Mandatory mediation of the claims that are the subject matter of the Nova Scotia Supreme Court litigation was ordered in the unique circumstances of a claim by the Respondents (who are Petitioners in the CCAA proceedings) against the Appellant, and not as a claim against the Petitioners by their creditors, even though the Appellant has denied all liability for the claim and opposed any requirement to participate in mandatory mediation at this time.

2. The Order was issued requiring mandatory mediation for a claim that the Appellant has consistently asserted is barred by statute and not subject to resolution by mediation and therefore at law is not an "asset" of the Petitioner's subject to such an exercise of broad discretion pursuant to s.11 of the CCAA.

3. The Order was issued with reasons to follow, although there was no urgency to the application for an Order for mandatory mediation of claims that are the subject matter of the Nova Scotia litigation, and such mandatory mediation will incur additional significant expenses estimated by the Petitioners at almost \$1 Million by October 31, 2022, such that the exercise of discretion pursuant to s.11

of the CCAA was unreasonable under all the circumstances and amounts to an injustice against the Appellant.

4. The Order was an inappropriate interference into the Nova Scotia Supreme Court litigation, particularly considering its preliminary stages and the availability of complex case management procedures through the Nova Scotia Civil Procedure Rules of the Supreme Court which is the appropriate jurisdiction to determine the outstanding legal issue of whether the claims advanced by the Respondent Petitioners against the Appellant are statutorily barred by s.4 of the *Boat Harbour Act*, S.N.S. 2015, c.4., as consistently asserted by the Appellant.
5. Such further grounds as may appear.

The trial/hearing of this proceeding occupied 1 day.

Dated at Halifax, Nova Scotia, this 21st day of April, 2022.



Sean Foreman, Q.C.
Debbie Brown
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Counsel for the Appellant,
The Attorney General of Nova Scotia

To the Respondents:

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.

And to its Solicitors:

H. Lance Williams & Sean Collins
McCarthy Tetrault LLP
Suite 2400, 745 Thurlow Street
Vancouver, BC V6E 0C5

Harvey Morrison, QC & John Roberts
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Halifax, NS B3J 3R7

This Notice of Application for Leave to Appeal is given by Sean Foreman, Q.C. whose address for service is:

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As agent for:

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To the Respondents:

IF YOU INTEND TO PARTICIPATE in this proceeding, YOU MUST GIVE NOTICE of your intention by filing a form entitled "Notice of Appearance" (Form 2 of the Court of Appeal Rules) in a Court of Appeal registry and serve the notice of appearance on the Appellant WITHIN 10 DAYS of receiving this Notice of Application for Leave to Appeal.

IF YOU FAIL TO FILE A NOTICE OF APPEARANCE:

- (a) you are deemed to take no position on the application; and
- (b) the parties are not obliged to serve you with any further documents related to the application.

The filing registries for the British Columbia Court of Appeal are as follows:

Central Registry:

B.C. Court of Appeal
400 – 800 Hornby Street
Vancouver, BC V6Z 2C5

Other Registries:

B.C. Court of Appeal
The Law Courts
P.O. Box 9248 STN PROV GOVT
850 Burdett Ave
Victoria, BC V8W 1B4

B.C. Court of Appeal
223 – 455 Columbia Street
Kamloops, BC V2C 6K4

Inquiries should be addressed to: 604.660.2468

Fax filings: 604.660.1951