

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TERRACE BAY PULP INC.

Applicant

**MOTION RECORD OF HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
AS REPRESENTED BY THE MINISTRY OF LABOUR
(Returnable May 15, 2013)**

May 8, 2013

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT
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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TERRACE BAY PULP INC.

Applicant

**AFFIDAVIT OF LINE FORESTIER
(Sworn May 8, 2013)**

I, Line Forestier, of the City of Toronto in the Province of Ontario, **MAKE OATH AND
SAY AS FOLLOWS:**

1. I am Crown Counsel employed with the Ministry of Attorney General, and seconded to the Ministry of Labour, Legal Services Branch. I have carriage of a health and safety prosecution involving a fatality that occurred in October of 2011 at the Terrace Bay Pulp Inc. ("Terrace Bay") facilities in Terrace Bay, Ontario and therefore have knowledge of the matters to which I hereinafter depose. Where the content of this affidavit is based on information and belief, I have indicated the source of my information and belief and do verily believe it to be true.

A. The First OHSA Proceeding

2. In preparing this affidavit, I have spoken to my colleague, Mike Nicol, Crown Counsel with carriage of the First OHSA Proceeding, as defined below. I believe the information below relating to the First OHSA Proceeding, provided by Mr. Nicol, to be true.

(i) The Incident Causing Injury and the Ministry's Investigation

3. On January 13, 2011, an employee of Terrace Bay suffered two broken knees when he was caught in debarking equipment that he was cleaning. The incident occurred at Terrace Bay's workplace on Mill Road in Terrace Bay, Ontario.

4. The Ministry of Labour (the "Ministry") is responsible for enforcing the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 ("OHSA" or "Act"), which is a remedial public welfare statute establishing minimum occupational health and safety standards for the protection of workers. It is the main vehicle by which the enforcement of health and safety occurs at the workplace.

5. A health and safety inspector employed by the Ministry investigated the incident and concluded that provisions of the OHSA had been contravened.

(ii) The Charges

6. On January 10, 2012, a prosecution under the *Provincial Offences Act*, R.S.O. 1990, c. P.33 (the "POA") was commenced against Terrace Bay and a supervisor at Terrace Bay for violations of the OHSA (the "First OHSA Proceeding"). The two defendants were charged on a single Information. Terrace Bay was charged with five health and safety violations and the individual defendant was charged with four health and safety violations. Attached hereto and marked as Exhibit "A" is a copy of the Information as it existed at the time that the Information was sworn before a Justice of the Peace.

7. On January 11, 2012, Terrace Bay was served with a summons requiring attendance on February 24, 2012 before the Ontario Court of Justice in Thunder Bay. Attached hereto and marked as Exhibit "B" is a copy of the Summons issued to and served on Terrace Bay.

8. On January 30, 2012, Terrace Bay's legal counsel contacted Mr. Nichols and requested disclosure from the Crown. The Crown provided disclosure to Terrace Bay's legal counsel.

9. The Crown intends to proceed with the charges against Terrace Bay only and will be withdrawing the counts against the individual.

(iii) Court Appearances

10. Terrace Bay's legal counsel has attended all scheduled court appearances since the first appearance, including a pretrial, and has also discussed terms of a possible resolution to this prosecution. The matter is next returnable before the Ontario Court of Justice in Thunder Bay on June 21, 2013.

B. The Second OHSA Proceeding

(i) The Incident Causing Death and the Ministry's Investigation

11. On October 31, 2011, a worker employed by Terrace Bay was killed when a tank measuring about 90 feet high exploded. This explosion occurred when workers employed by Venshore Mechanical Inc. ("Venshore") were performing welding repairs to the tank. This incident also occurred at Terrace Bay's workplace on Mill Road in Terrace Bay, Ontario.

12. A health and safety inspector employed by the Ministry investigated the incident and concluded that provisions of the OHSA had been contravened. The inspector's extensive investigation brief fills a bankers' box and includes photographs, police, engineering and Fire Marshal reports, witness statements and records obtained from Terrace Bay.

(ii) The Charges

13. On October 15, 2012, a prosecution under the POA was commenced against five co-defendants for violations of the OHSA (the "Second OHSA Proceeding"). Terrace Bay, Venshore and three Terrace Bay supervisors were charged on a single Information. Attached hereto and marked as Exhibit "C" is a copy of the Information as it existed at the time that the Information was sworn before a Justice of the Peace.

14. Terrace Bay and Venshore were each charged, as an employer, with three health and safety violations: 1) failing to ensure a tank was rendered free from any explosive substance before performing repairs on the tank; 2) failing to provide adequate information, instruction and supervision to a worker; and 3) failing to take every precaution reasonable in the circumstances for the protection of a worker.

15. Three individuals employed by Terrace Bay were also each charged, as a supervisor, with two health and safety violations: 1) failing to ensure a tank was rendered free from any explosive substance before performing repairs on the tank; and 2) failing to take every precaution reasonable in the circumstances for the protection of a worker.

16. Each defendant was served with a summons requiring attendance on November 23, 2012 before the Ontario Court of Justice in Thunder Bay. Attached hereto and marked as Exhibit "D" is a copy of the Summons issued to and served on Terrace Bay.

17. Insolvency Counsel for Terrace Bay sent the Ministry a letter dated October 23, 2012 stating, in part, that Terrace Bay was not required to attend at the first appearance in light of the stay of proceedings obtained pursuant to the *Companies' Creditors Arrangement Act*, R.S.C.

1985, c. C-36 (the "CCAA"). The Crown disagreed and responded accordingly on October 24, 2102. Attached hereto and marked as Exhibit "E" is a copy of a letter from Terrace Bay's counsel dated October 23, 2012 and attached hereto and marked as Exhibit "F" is the Crown's response, dated October 24, 2012.

18. Terrace Bay's Insolvency Counsel subsequently sent the Ministry a letter dated November 16, 2012 requesting that the prosecution of the OHSA be adjourned for five months, to the end of April 2013, to allow Terrace Bay to bring a motion under the CCAA to stay the prosecution. This motion to stay the prosecution was to be brought at the same time as the motion to extend the stay of proceedings provided for under the CCAA. The Ministry responded that it would oppose this adjournment request, as the OHSA Proceedings must proceed in a timely manner and that there are four co-defendants, including three individuals, whose Charter rights to a timely trial could be negatively affected by such a long adjournment. Attached hereto and marked as Exhibit "G" is a copy of a letter from Terrace Bay's Insolvency Counsel dated November 16, 2012 and attached hereto and marked as Exhibit "H" is the Crown's response, dated November 22, 2012.

(iii) Court Appearances

19. Transcripts of the court appearances in this matter have not been ordered. I rely on my notes and my best recollection. I and counsel or agents for all co-defendants, including Terrace Bay, attended every court appearance listed below.

20. The first court appearance in the Second OHSA Proceeding took place on November 23, 2012 before the Ontario Court of Justice in Thunder Bay. Defence counsel Yves Fricot appeared for Terrace Bay and requested that the prosecution be adjourned to the end of April 2013 to allow Terrace Bay to bring its motion to stay the OHSA prosecution on the same date as the motion to extend the stay of proceedings. The Crown opposed this request and counsel for the remaining four co-defendants either opposed or did not consent to this request for a lengthy adjournment. The Court specifically noted that individuals had been charged and that it would be unfair to these individuals to grant such a long adjournment. The matter was adjourned to December 21, 2012, to be spoken to.

21. Following this first court appearance, the Court Office contacted the Crown and the co-defendants to arrange a pre-trial to discuss procedural issues. The date selected for this court-initiated pretrial was January 18, 2013.

22. By the end of November 2012, all co-defendants except Terrace Bay had requested and obtained Crown disclosure.

23. At the second court appearance in this proceeding, on December 21, 2012, the matter was adjourned to January 18, 2013 for a court-initiated pre-trial to discuss procedural issues.

24. On January 18, 2013, a court-initiated procedural pre-trial took place before His Worship Leaman. Counsel for Terrace Bay renewed his request to adjourn the matter to the end of April. Counsel for the co-defendants and the Crown opposed this request. The Crown elected, pursuant to subsection 68(2) of the OHSA, to have this prosecution heard before a Judge rather than a Justice of the Peace. The matter was adjourned to February 11, 2013 to be spoken to before a Judge of the Ontario Court of Justice in Thunder Bay.

25. On February 11, 2013, the matter was adjourned to May 29, 2013 for a pre-trial before Her Honour J. Pelletier. My recollection of discussions on February 11, 2013 (be it before, during or after the court appearance) is that Yves Fricot, counsel for Terrace Bay, indicated that Terrace Bay might wish to be present at the May 29, 2013 pre-trial and, if in attendance, would observe, but not participate in or contribute to the pre-trial.

C. The Impact of Staying the OHSA Proceedings

26. The granting of a stay of the OHSA Proceedings will necessarily delay the prosecution. A delayed prosecution is not in the public interest.

- a. The Crown's ability to establish its case may be significantly prejudiced as witnesses become unavailable or their memories fail.
- b. The public, including the families of the deceased worker and the injured worker, is denied a timely resolution of the matter.
- c. Timely prosecutions benefit general worker health and safety as they may advance both specific and general deterrence.

27. With regard to the Second OHSA Proceeding, the co-defendants' right to a trial within a reasonable period of time may be negatively affected if Terrace Bay is granted a stay. The Crown is prepared to set trial dates but, with the resulting uncertainty as to whether the matter is

proceeding against all defendants, the judge presiding at the pre-trial may be reluctant to schedule trial dates for the co-defendants.

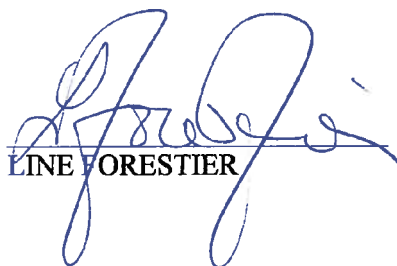
28. Further, the Crown may not be able to proceed with a single trial if the charges against Terrace Bay are stayed, even on an interim basis. In order to mitigate against delay that might result to the co-defendants, the Crown may be forced to proceed separately against the co-defendants. This is not in the public interest. Additional Crown and court resources will be required to handle two complex and lengthy prosecutions relating to the same incident and charges. Further, if prosecutions against Terrace Bay's co-defendants and Terrace Bay proceed separately, witnesses will be inconvenienced, as they will be testifying twice. It is in the public interest that all co-defendants be tried together in a timely fashion.

D. The Potential Result of a Successful Prosecution

29. Pursuant to a Memorandum of Understanding between Her Majesty in Right of Ontario (the "Crown") and the Municipality of Thunder Bay ("Thunder Bay"), any monetary penalties imposed in proceedings under the POA are a liability collected by and owed to Thunder Bay. Attached hereto as Exhibit "I" is a copy of the MOU dated August 8, 2000, without schedules.

30. I swear this affidavit in response to the Applicant's motion for an interim and permanent stay of the OHSA Proceedings and for no improper purpose.

SWORN before me at the City)
of Toronto, in the Province)
of Ontario this 8th day of)
May, 2013.)


LINE FORESTIER


A Commissioner for taking Affidavits, etc.

Elizabeth Broxt

This is Exhibit "A" referred to in the
Affidavit of Line Forester sworn the
8th day of May, 2013



A Commissioner, etc.

Richard Brest

8

NORTH WEST REGION
INFORMATION
DÉNONCIATION

ONTARIO COURT OF JUSTICE
COUR DE JUSTICE DE L'ONTARIO
PROVINCE OF ONTARIO
PROVINCE DE L'ONTARIO

Under Section 23 of the Provincial Offences Act
En vertu de l'article 23 de la Loi sur les infractions provinciales

Form / Formulaire 105
Courts of Justice Act
Loi sur les tribunaux judiciaires
R.R.O. / L.R.O. 1990
O.Reg. / Rég. de l'Ont. O. 200

This is the information of DOUGLAS CETTINA
Dénonciation déposée par

of Ministry of Labour
de

Inspector
(occupation / profession)

I have reasonable and probable grounds to believe and do believe that / J'ai des motifs raisonnables de croire et je crois effectivement que
TERRACE BAY PULP INC. Mr. Taras Sawula, 1120 Premier Way, Thunder Bay, Ontario,
P7B 0A3

(name / nom)

on or about / le ou vers le 13th day of / jour de January, yr. / an 2011,

at the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario
à

(location / lieu)

did commit the offence of
a commis l'infraction de

failing, as an employer, to ensure that the measures and procedures prescribed by section 24 of Ontario Regulation 851/90, R.S.O. 1990, as amended, were carried out in the workplace located at 21 Mill Road, Terrace Bay, Ontario contrary to section 25(1)(c) of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1., as amended.

(2) AND FURTHER THAT Terrace Bay Pulp Inc., Mr. Taras Sawula, 1120 Premier Way, Thunder Bay, Ontario, P7B 0A3, on or about the 13th day of January, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing, as an employer, to ensure that the measures and procedures prescribed by section 25 of Ontario Regulation 851/90, R.S.O. 1990, as amended, were carried out in the workplace located at 21 Mill Road, Terrace Bay, Ontario contrary to section 25(1)(c) of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1., as amended.

(3) AND FURTHER THAT Terrace Bay Pulp Inc., Mr. Taras Sawula, 1120 Premier Way, Thunder Bay, Ontario, P7B 0A3, on or about the 13th day of January, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing, as an employer, to ensure that the measures and procedures prescribed by section 75 of Ontario Regulation 851/90, R.S.O. 1990, as amended, were carried out in the workplace located at 21 Mill Road, Terrace Bay, Ontario contrary to section 25(1)(c) of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1., as amended.

(4) AND FURTHER THAT Terrace Bay Pulp Inc., Mr. Taras Sawula, 1120 Premier Way, Thunder Bay, Ontario, P7B 0A3, on or about the 13th day of January, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing, as an employer, to ensure that the measures and procedures prescribed by section 76 of Ontario Regulation 851/90, R.S.O. 1990, as amended, were carried out in the workplace located at 21 Mill Road, Terrace Bay, Ontario contrary to section 25(1)(c) of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1., as amended.

(5) AND FURTHER THAT Terrace Bay Pulp Inc., Mr. Taras Sawula, 1120 Premier Way, Thunder Bay, Ontario, P7B 0A3, on or about the 13th day of January, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing, as an employer, to provide information, instruction and supervision to a worker to protect the health or safety of the worker, contrary to section 25(2)(a) of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1., as amended.

rcu
(6) AND FURTHER THAT Gino Leblanc, 4 Strathcona Avenue, Terrace Bay, Ontario, P0T 2W0, on or about the 13th day of January, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing, as a supervisor, to ensure that the worker worked in the manner and with the protective devices, measures and procedures required by section 24 of Ontario Regulation 851/90, R.S.O. 1990, as amended, in the workplace located at 21 Mill Road, Terrace Bay, Ontario contrary to section 27(1)(a) of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1., as amended.

Please see page 2 of information for counts 7, 8 and 9.

contrary to Occupational Health and Safety Act
contrairement à(au)

section 25(1)(c), 25(2)(a), 27(1)(a)
article

LONG FORM - TWO OR MORE CHARGES
FORMULE COMPLÈTE - DEUX ACCUSATIONS OU PLUS

9

TERRACE BAY PULP INC.
INFORMATION – PAGE 2

(7) **AND FURTHER THAT** Gino Leblanc, 4 Strathacona Avenue, Terrace Bay, Ontario, POT 2W0, on or about the 13th day of January, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing, as a supervisor, to ensure that the worker worked in the manner and with the protective devices, measures and procedures required by section 25 of Ontario Regulation 851/90, R.S.O. 1990, as amended, in the workplace located at 21 Mill Road, Terrace Bay, Ontario, contrary to section 27(1)(a) of the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1., as amended.

(8) **AND FURTHER THAT** Gino Leblanc, 4 Strathacona Avenue, Terrace Bay, Ontario, POT 2W0, on or about the 13th day of January, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing, as a supervisor, to ensure that the worker worked in the manner and with the protective devices, measures and procedures required by section 75 of Ontario Regulation 851/90, R.S.O. 1990, as amended, in the workplace located at 21 Mill Road, Terrace Bay, Ontario, contrary to section 27(1)(a) of the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1., as amended.

(9) **AND FURTHER THAT** Gino Leblanc, 4 Strathacona Avenue, Terrace Bay, Ontario, POT 2W0, on or about the 13th day of January, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing, as a supervisor, to ensure that the worker worked in the manner and with the protective devices, measures and procedures required by section 76 of Ontario Regulation 851/90, R.S.O. 1990, as amended, in the workplace located at 21 Mill Road, Terrace Bay, Ontario, contrary to section 27(1)(a) of the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1., as amended.

Mike Nicol
Counsel
Legal Services Branch
Ministry of Labour
400 University Avenue, 11th Floor
Toronto, Ontario, M7A 1T7
Tel: (416) 326-7970
Fax: (416) 326-7985



Sworn before me at the
Assermenté devant moi au

this 10th day of January, yr. 2012
le 10^e jour de Janvier an

Judge or Justice of the Peace in and for the Province of Ontario
Juge ou juge de paix dans et pour la province d'Ontario

Sec. 24 / art. 24

☐ Summons for _____, yr. _____
Sommons pour _____, an

☐ Confirmed on _____, yr. _____
Confirmée le _____, an

Informant
Dénonciateur

Justice of the Peace
Juge de paix

Date Date	Defendant Défendeur	Pleads / Plaide Guilty to Counts / Coupable sous les chefs	Pleads / Plaide Not Guilty to Counts / Non coupable sous les chefs	Found Guilty on Counts Déclaré coupable sous les chefs	Not Guilty on Counts Déclaré non coupable sous les chefs

Date

☐ In Absentia / Défaut de comparution

counts / chefs d'accusation
Fined \$ _____ & \$ _____ Costs. Time to pay _____
Amende de \$ et \$ de frais. Délai de paiement
Date of Birth _____
Date de naissance D / J M Y / A
Probation _____
Période de probation de
Sentenced to Imprisonment for _____
Peine d'emprisonnement de
☐ withdrawn accusation(s) retirée(s) ☐ sentence suspended
condemnation avec sursis

counts / chefs d'accusation
Fined \$ _____ & \$ _____ Costs. Time to pay _____
Amende de \$ et \$ de frais. Délai de paiement
Date of Birth _____
Date de naissance D / J M Y / A
Probation _____
Période de probation de
Sentenced to Imprisonment for _____
Peine d'emprisonnement de
☐ withdrawn accusation(s) retirée(s) ☐ sentence suspended
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counts / chefs d'accusation
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Date of Birth _____
Date de naissance D / J M Y / A
Probation _____
Période de probation de
Sentenced to Imprisonment for _____
Peine d'emprisonnement de
☐ withdrawn accusation(s) retirée(s) ☐ sentence suspended
condemnation avec sursis

counts / chefs d'accusation
Fined \$ _____ & \$ _____ Costs. Time to pay _____
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Probation _____
Période de probation de
Sentenced to Imprisonment for _____
Peine d'emprisonnement de
☐ withdrawn accusation(s) retirée(s) ☐ sentence suspended
condemnation avec sursis

Judge or Justice of the Peace in and for the Province of Ontario
Juge ou juge de paix dans et pour la province de l'Ontario

Milne Nicol
Counsel
Legal Services Branch
Ministry of Labour
400 University Avenue, 11th Floor
Toronto, Ontario, M7A 1T7
Tel: (416) 326-7970
Fax: (416) 326-7985

No. of Information / N° de la dénonciation
Return Date of Summons / Sommons rapportée le 24 th February , yr. / an 2012

INFORMATION Against / DÉNONCIATION Visant

TERRACE BAY PULP INC.

ADDRESS
ADDRESS

Mr. Taras Sewula, 1120 Premier Way, Thunder
Bay, Ontario, P7B 0A3

CHARGE: / ACCUSATION :

TERRACE BAY PULP INC.

- 1) s. 24 of O. Reg. 851/90, contrary to s. 25(1)(c) of OHSA
- 2) s. 25 of O. Reg. 851/90, contrary to s. 25(1)(c) of OHSA
- 3) s. 75 of O. Reg. 851/90, contrary to s. 25(1)(c) of OHSA
- 4) s. 76 of O. Reg. 851/90, contrary to s. 25(1)(c) of OHSA
- 5) contrary to s. 25(2)(a) of OHSA

GINO LEBLANC:

- 6) s. 24 of O. Reg. 851/90, contrary to s. 27(1)(a) of OHSA
- 7) s. 25 of O. Reg. 851/90, contrary to s. 27(1)(a) of OHSA
- 8) s. 75 of O. Reg. 851/90, contrary to s. 27(1)(a) of OHSA
- 9) s. 76 of O. Reg. 851/90, contrary to s. 27(1)(a) of OHSA

☒ Summons Sommons		☐ Warrant Mandat		☐ Arrest Arrestation	
Reportable M.V. Offence (H.T.A. 210) Rapport V.M. Code de la route 210		C.V.O.R. No. (Commercial Vehicles Only) Numéro (C.V.U.) (véhicules utilitaires seulement)			
Sex Sexe	Birth Date / Date de naissance Day / Jour	Month / Mois	Year / Année	Was defendant owner? Le défendeur était-il propriétaire? ☐ Yes / Oui ☐ No / Non	
Driver's Licence Number / Numéro du permis de conduire					
Plate No. / Numéro de plaque					
☐ Involves an Accident Infraction liée à un accident					
Informant Dénonciateur					
Date Sworn Date d'assermentation					
Officer / Agent de police					
No. / N°					
Div. Div.					
Dist./Agency Dist./Agence					
Courtroom / Salle d'audience # 1					
At / A					
10:30 a.m.					
110 Archibald St., POA, Thunder Bay, Ontario					

This is Exhibit "B" referred to in the
Affidavit of Line Forester sworn the
8th day of May, 2013



A Commissioner, etc.

Richard B. Smith

NORTH WEST REGION

**SUMMONS
ASSIGNATION**

ONTARIO COURT OF JUSTICE
COUR DE JUSTICE DE L'ONTARIO
PROVINCE OF ONTARIO
PROVINCE DE L'ONTARIO

Under Section 24 of the Provincial Offences Act
Aux termes de l'article 24 de la Loi sur les infractions provinciales

Form / Formule 106
Courts of Justice Act
Loi sur les tribunaux judiciaires
R.R.O. / R.R.O. 1990
O. Reg. / Règl. de l'Ont. 200

To Terrace Bay Pulp Inc.
A Mr. Taras Sawula
of 1120 Premier Way.
de(du) Thunder Bay, Ontario
P7B 0A3

Whereas you have been charged before me that you,
Attendu que vous avez été accusé(e) devant moi d'avoir

on or about the / le ou vers le 13th day of / jour de January, yr. / an 2011 at / à In the Township of Terrace Bay, in the Northwest
Region, in the Province of Ontario

did commit the offence of / commis l'infraction suivante

failing, as an employer, to ensure that the measures and procedures prescribed by section 24 of Ontario Regulation 851/90,
R.S.O. 1990, as amended, were carried out in the workplace located at 21 Mill Road, Terrace Bay, Ontario contrary to section
25(1)(c) of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1., as amended.

[AND FURTHER, you have been charged with additional four (4) offences as set out in the Appendix to this Summons].

contrary to the Occupational Health & Safety Act
contrairement à

section 25(1)(c), 25(2)(a)
article

THEREFORE YOU ARE COMMANDED IN HER MAJESTY'S NAME TO APPEAR BEFORE THE ONTARIO COURT OF JUSTICE
À CES CAUSES, VOUS ÊTES SOMMÉ(E), AU NOM DE SA MAJESTÉ, DE COMPARAÎTRE DEVANT LA COUR DE JUSTICE DE L'ONTARIO

at 110 Archibald St., POA - Thunder Bay, Ontario
à(au)

on the 24th day of February, yr. 2012 at 10:30 a.m.
le jour de an à (time / heure) h

at # 1
à (courtroom / salle d'audience)

and to appear thereafter as required by the court to be dealt with according to law.
et de comparaître par la suite selon les exigences du tribunal, afin d'être traité(e) selon la loi.

Issued at Thunder Bay
Délivrée à
this 10th day of January, yr. 2012
ce jour de an


Judge or Justice of the Peace in and for the Province of Ontario
Juge ou juge de paix dans et pour la province de l'Ontario

NOTE to Defendant:

You may appear personally, by agent or counsel.

If you do not appear:

- a) the court may issue a warrant for your arrest; or
- b) the trial may proceed, and the evidence may be taken in your absence.

If you do appear:

- a) the trial may proceed; or
- b) you, or the prosecutor, may ask the court to adjourn your case to another date. The court may grant or refuse such a request.

REMARQUE à la partie défenderesse :

Vous pouvez comparaître personnellement, par mandataire, ou par un avocat.

Si vous ne comparez pas :

- a) le tribunal peut délivrer un mandat d'arrêt contre vous ; ou
- b) le procès peut être tenu et la preuve peut être entendue en votre absence.

Si vous comparez :

- a) le procès peut être tenu ; ou
- b) vous pouvez, vous ou le poursuivant, demander au tribunal un ajournement. Le tribunal peut accorder ou refuser cette demande.

FOR INFORMATION ON ACCESS
TO ONTARIO COURTS
FOR PERSONS WITH DISABILITIES, CALL
1-800-387-4488
TORONTO AREA 416-326-0111



POUR PLUS DE RENSEIGNEMENTS SUR L'ACCÈS
DES PERSONNES HANDICAPÉES
AU TRIBUNAL DE L'ONTARIO, COMPOSEZ LE
1 800 387-4488
RÉGION DE TORONTO 416-326-0111

NORTH WEST REGION
AFFIDAVIT OF SERVICE OF SUMMONS
AFFIDAVIT DE SIGNIFICATION DE L'ASSIGNATION

ONTARIO COURT OF JUSTICE
COUR DE JUSTICE DE L'ONTARIO
PROVINCE OF ONTARIO
PROVINCE DE L'ONTARIO

Under Subsection 28(6) of the Provincial Offences Act
En vertu du paragraphe 28(6) de la Loi sur les infractions provinciales

I, DOUGLAS Cettina, of MINISTRY OF LABOUR,
Je soussigné(e), de(du) 17th day of JANUARY, yr. 2012
an

a provincial offences officer make oath and say as follows, that on the
un agent des infractions provinciales, déclare sous serment que le
I did serve the summons in the manner indicated below:
j'ai signifié l'assignation de la manière suivante :

(CHECK ONE / COCHER LA CASE APPLICABLE)

- (a) ☐ by delivering it personally to the Defendant;
en la remettant en main propre à la partie défenderesse;
- (b) ☐ I could not conveniently find the Defendant and left the summons for him/her at his / her last known or usual place of abode
la partie défenderesse ne pouvant être commodément trouvée, en laissant l'assignation à son intention, à sa dernière
adresse connue ou sa résidence habituelle en la remettant
with
à
an inmate thereof who appeared at least sixteen years of age;
une personne habitant les lieux qui m'a semblé avoir au moins 16 ans;

- (c) ☐ service on a municipal corporation: by leaving it personally with
signification à une municipalité : en la remettant en main propre à
the
(name / nom) le(la) (position / titre)
(the mayor, reeve, warden, or other chief officer, or the Clerk of the Corporation / maire, préfet, président du conseil de comté, ou autre dirigeant ou secrétaire de la municipalité)
☐ at the address shown on the summons / à l'adresse figurant sur l'assignation
☐ at / à (au)

- (d) ☒ service on a corporation other than a municipal corporation: by leaving it personally with
signification à toute autre personne morale : en la remettant en main propre à
DARIN CROCKFORD the SAFETY COORDINATOR
(name / nom) le(la) (position / titre)
(manager, secretary, or other executive officer of the corporation, or person apparently in charge of the branch office thereof /
directeur, secrétaire ou autre dirigeant, ou personne ayant manifestement la responsabilité de la succursale)

- ☐ at the address shown on the summons / à l'adresse figurant sur l'assignation
☒ at / à (au) 21 MILL ROAD TBRACE BAY ONT.
(e) ☐ by mailing it by registered mail to the corporation at
en l'envoyant par courrier recommandé à la personne morale à (au)

- an address held out by the corporation to be its address
l'adresse indiquée par la personne morale comme la sienne
- (f) ☐ by mailing it by registered mail to the Defendant, who is not a resident in Ontario,
en l'envoyant par courrier recommandé à la partie défenderesse, qui ne réside pas en Ontario,
at / à (au)
his / her last known or usual place of abode.
sa dernière adresse connue ou sa résidence habituelle.

Sworn before me at THUNDER BAY
Assermenté devant moi à (au)
this 11 day of JANUARY, yr. 2012
ce jour de an

[Signature]
Signature
No. Div.
N° Div.

Justice of the Peace in and for the Province of Ontario / Commissioner
for Taking Affidavits / Juge de paix dans et pour la province de l'Ontario / Commissaire à l'assermentation
Dorinda Gordon Jewell, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of Labour.
Expires September 8, 2014.

**APPENDIX TO SUMMONS COMMANDING APPEARANCE OF
TERRACE BAY PULP INC.**

AND FURTHER THAT Terrace Bay Pulp Inc., Mr. Taras Sawula, 1120 Premier Way, Thunder Bay, Ontario, P7B 0A3, on or about the 13th day of January, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing, as an employer, to ensure that the measures and procedures prescribed by section 25 of Ontario Regulation 851/90, R.S.O. 1990, as amended, were carried out in the workplace located at 21 Mill Road, Terrace Bay, Ontario, contrary to section 25(1)(c) of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1., as amended.

AND FURTHER THAT Terrace Bay Pulp Inc., Mr. Taras Sawula, 1120 Premier Way, Thunder Bay, Ontario, P7B 0A3, on or about the 13th day of January, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing, as an employer, to ensure that the measures and procedures prescribed by section 75 of Ontario Regulation 851/90, R.S.O. 1990, as amended, were carried out in the workplace located at 21 Mill Road, Terrace Bay, Ontario, contrary to section 25(1)(c) of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1., as amended.

AND FURTHER THAT Terrace Bay Pulp Inc., Mr. Taras Sawula, 1120 Premier Way, Thunder Bay, Ontario, P7B 0A3, on or about the 13th day of January, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing, as an employer, to ensure that the measures and procedures prescribed by section 76 of Ontario Regulation 851/90, R.S.O. 1990, as amended, were carried out in the workplace located at 21 Mill Road, Terrace Bay, Ontario, contrary to section 25(1)(c) of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1., as amended.

AND FURTHER THAT Terrace Bay Pulp Inc., Mr. Taras Sawula, 1120 Premier Way, Thunder Bay, Ontario, P7B 0A3, on or about the 13th day of January, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing, as an employer, to provide information, instruction and supervision to a worker to protect the health or safety of the worker, contrary to section 25(2)(a) of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1., as amended.

Mike Nicol
Counsel
Legal Services Branch
Ministry of Labour
400 University Avenue, 11th Floor
Toronto, Ontario, M7A 1T7
Tel. (416) 326-7970
Fax (416) 326-7985

This is Exhibit "C" referred to in the
Affidavit of Line Forester sworn the
8th day of May, 2013



A Commissioner, etc.

Birchett Brook

ONTARIO COURT OF JUSTICE
COUR DE JUSTICE DE L'ONTARIO
PROVINCE OF ONTARIO
PROVINCE DE L'ONTARIO

NORTHWEST REGION
INFORMATION
DÉNONCIATION
Under Section 23 of the Provincial Offences Act
En vertu de l'article 23 de la Loi sur les infractions provinciales

Form / Formule 105
Courts of Justice Act
Loi sur les tribunaux judiciaires
R.R.O. / L.R.O. 1990
O.Reg. / Règl. de l'Ont. O. 200

This is the information of /
Dénonciation déposée par ROBERT GARRITY

of /
de Ministry of Labour

Inspector
(occupation / profession)

I have reasonable and probable grounds to believe and do believe that / J'ai des motifs raisonnables de croire et je crois effectivement que
Terrace Bay Pulp Inc. 1120 Premier Way, Thunder Bay, Ontario, P7B 0A3
(name / nom)

on or about / le ou vers le 31st day of / jour de October, yr. / an 2011,
at the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario
(location / lieu)

did commit the offence of /
a commis l'infraction de
falling as an employer, to ensure that the measures and procedures prescribed by section 78 of Ontario Regulation 851/90, R.S.O. 1990, as amended, were carried out in the workplace located at 21 Mill Road, Terrace Bay Township, Ontario contrary to section 25(1)(c) of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1., as amended.

Particulars: The defendant failed to ensure that a tank or container to which repairs or alterations were to be made was drained and cleaned or otherwise rendered free from any explosive, flammable or harmful substance.

2. AND FURTHER THAT, Terrace Bay Pulp Inc., 1120 Premier Way, Thunder Bay, Ontario, P7B 0A3, on or about the 31st day of October, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of falling as an employer, to provide information, instruction and supervision to a worker to protect the health and safety of the worker at a workplace located at 21 Mill Road, Terrace Bay Township, Ontario contrary to section 25(2)(a) of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1., as amended.

Particulars: The defendant failed to provide adequate information, instruction and supervision to a worker on how to safely drain, clean or otherwise render Blow Tank #1 free from any hazardous substances, and/or

The defendant failed to provide information, instruction and supervision to a worker on how and when to safely perform welding-related work on Blow Tank #1.

[Please see Page 2, 3, 4, & 5 of the Information for further charges.]

contrary to Occupational Health and Safety Act
contrairement à (au) _____

section 25(1)(c) x 2; 25(2)(a) x 2; 25(2)(h) x 2; 27(1)(a) x 3; 27(2)(c) x 3
article _____

Information- Page Two

3. AND FURTHER THAT, Terrace Bay Pulp Inc., 1120 Premier Way, Thunder Bay, Ontario, P7B 0A3, on or about the 31st day of October, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing as an employer, to ensure all reasonable precautions were taken at a workplace located at 21 Mill Road, Terrace Bay Township, Ontario contrary to section 25(2)(h) of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1., as amended.

Particulars: The defendant failed to take the reasonable precaution of ensuring adequate procedures or written policies, with respect to isolating Blow Tank #1, ridding the tank of a hazardous substance or testing this tank for such a substance, existed and were followed by a worker before welding-related work was performed on the tank, and/or

The defendant failed to take the reasonable precaution of ensuring the inside of Blow Tank #1 was adequately tested for a hazardous substance before welding-related work on this tank was commenced, and/or

The defendant failed to take the reasonable precaution of planning and adequately coordinating various Blow Tank #1 work activities, including the cleaning of the inside of this tank to render it free from hazardous substances and the gas testing of this tank, before welding-related work was performed on the tank.

4. AND FURTHER THAT, Venshore Mechanical Ltd., 1019 Northern Avenue, Thunder Bay, Ontario, P7C 5L6, on or about the 31st day of October, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing as an employer, to ensure that the measures and procedures prescribed by section 78 of Ontario Regulation 851/90, R.S.O. 1990, as amended, were carried out in the workplace located at 21 Mill Road, Terrace Bay Township, Ontario contrary to section 25(1)(c) of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1., as amended.

Particulars: The defendant failed to ensure that a tank or container to which repairs or alterations were to be made was drained and cleaned or otherwise rendered free from any explosive, flammable or harmful substance.

5. AND FURTHER THAT, Venshore Mechanical Ltd., 1019 Northern Avenue, Thunder Bay, Ontario, P7C 5L6, on or about the 31st day of October, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing as an employer, to provide information, instruction and supervision to a worker to protect the health and safety of the worker at a workplace located at 21 Mill Road, Terrace Bay Township, Ontario contrary to section 25(2)(a) of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1., as amended.

Particulars: The defendant failed to provide information, instruction and supervision to a worker on how and when to safely perform welding-related work on a tank.

Information- Page Three

6. AND FURTHER THAT, Venshore Mechanical Ltd., 1019 Northern Avenue, Thunder Bay, Ontario, P7C 5L6, on or about the 31st day of October, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing as an employer, to ensure all reasonable precautions were taken at a workplace located at 21 Mill Road, Terrace Bay Township, Ontario contrary to section 25(2)(h) of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1., as amended.

Particulars: The defendant failed to take the reasonable precaution of ensuring an adequate work plan was in place and followed or adequate instructions were given to a worker performing welding-related work on a cracked tank that normally contains a hazardous substance, and /or

The defendant failed to take the reasonable precaution of ensuring a worker performing welding related work was informed of potential hazards associated with the equipment being welded.

7. AND FURTHER THAT, Alain Zborowski, 315 Newman Street, Schreiber, Ontario POT 2S0 on or about the 31st day of October, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing, as a supervisor, to ensure that the worker worked in the manner and with the protective devices, measures and procedures required by section 78 of Ontario Regulation 851/90, R.S.O. 1990, as amended, in the workplace located at 21 Mill Road, Terrace Bay Township, Ontario contrary to section 27(1)(a) of the Occupational Health and Safety Act, R.S.O. 1990, c.O.1., as amended.

Particulars: The defendant failed to ensure that a tank or container to which repairs or alterations were to be made was drained and cleaned or otherwise rendered free from any explosive, flammable or harmful substance.

8. AND FURTHER THAT, Alain Zborowski, 315 Newman Street, Schreiber, Ontario POT 2S0 on or about the 31st day of October, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing, as a supervisor, to take every precaution reasonable in the circumstances for the protection of a worker at a workplace located at 21 Mill Road, Terrace Bay Township, Ontario contrary to section 27(2)(c) of the Occupational Health and Safety Act, R.S.O. 1990, c.O.1., as amended.

The defendant failed to take the reasonable precaution of ensuring adequate procedures or written policies, with respect to isolating, ridding Blow Tank #1 of a hazardous substance or testing this tank for such a substance, existed and were followed by a worker before welding-related work was performed on the tank, and/or

Information- Page Four

The defendant failed to take the reasonable precaution of ensuring the inside of Blow Tank #1 was tested for a hazardous substance before welding-related work on this tank was commenced, and/or

The defendant failed to take the reasonable precaution of ensuring a hazardous substance in the Blow Tank #1 was removed in a manner that did not endanger a worker, and /or

The defendant failed to take the reasonable precaution of planning and adequately coordinating various Blow Tank #1 work activities, including the cleaning of the inside of this tank to render it free from hazardous substances and the gas testing of this tank, before welding-related work was performed on the tank.

9. AND FURTHER THAT, Arthur Szczepaniak, 10 Southridge Cr. Terrace Bay, Ontario P0T 2W0 on or about the 31st day of October, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing, as a supervisor, to ensure that the worker worked in the manner and with the protective devices, measures and procedures required by section 78 of Ontario Regulation 851/90, R.S.O. 1990, as amended, in the workplace located at 21 Mill Road, Terrace Bay Township, Ontario contrary to section 27(1)(a) of the Occupational Health and Safety Act, R.S.O. 1990, c.O.1., as amended.

Particulars: The defendant failed to ensure that a tank or container to which repairs or alterations were to be made was drained and cleaned or otherwise rendered free from any explosive, flammable or harmful substance.

10. AND FURTHER THAT, Arthur Szczepaniak, 10 Southridge Cr. Terrace Bay, Ontario P0T 2W0 on or about the 31st day of October, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing, as a supervisor, to take every precaution reasonable in the circumstances for the protection of a worker at a workplace located at 21 Mill Road, Terrace Bay Township, Ontario contrary to section 27(2)(c) of the Occupational Health and Safety Act, R.S.O. 1990, c.O.1., as amended.

Particulars: The defendant failed to take the reasonable precaution of ensuring adequate procedures or written policies, with respect to isolating, ridding Blow Tank #1 of a hazardous substance or testing this tank for such a substance, existed and were followed by a worker before welding-related work was performed on the tank, and/or

The defendant failed to take the reasonable precaution of ensuring the inside of Blow Tank #1 was tested for a hazardous substance before welding-related work on this tank was commenced, and/or

The defendant failed to take the reasonable precaution of ensuring a hazardous substance in the Blow Tank #1 was removed in a manner that did not endanger a worker, and /or

Information- Page Five

The defendant failed to take the reasonable precaution of planning and adequately coordinating various Blow Tank #1 work activities, including the cleaning of the inside of this tank to render it free from hazardous substances and the gas testing of this tank, before welding-related work was performed on the tank.

11. AND FURTHER THAT, Joseph Mykietyn, 112 Mountainside Road, Schreiber, Ontario P0T 2W0 on or about the 31st day of October, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing, as a supervisor, to ensure that the worker worked in the manner and with the protective devices, measures and procedures required by section 78 of Ontario Regulation 851/90, R.S.O. 1990, as amended, in the workplace located at 21 Mill Road, Terrace Bay Township, Ontario contrary to section 27(1)(a) of the Occupational Health and Safety Act, R.S.O. 1990, c.O.1., as amended.

Particulars: The defendant failed to ensure that a tank or container to which repairs or alterations were to be made was drained and cleaned or otherwise rendered free from any explosive, flammable or harmful substance.

12. AND FURTHER THAT, Joseph Mykietyn, 112 Mountainside Road, Schreiber, Ontario P0T 2W0 on or about the 31st day of October, 2011, in the Township of Terrace Bay, in the Northwest Region, in the Province of Ontario, did commit the offence of failing, as a supervisor, to take every precaution reasonable in the circumstances for the protection of a worker at a workplace located at 21 Mill Road, Terrace Bay Township, Ontario contrary to section 27(2)(c) of the Occupational Health and Safety Act, R.S.O. 1990, c.O.1., as amended.

Particulars: The defendant failed to take the reasonable precaution of ensuring adequate procedures or written policies, with respect to isolating, ridding Blow Tank #1 of a hazardous substance or testing this tank for such a substance, existed and were followed by a worker before welding-related work was performed on the tank, and/or

The defendant failed to take the reasonable precaution of ensuring the inside of Blow Tank #1 was tested for a hazardous substance before welding-related work on this tank was commenced, and/or

The defendant failed to take the reasonable precaution of ensuring a hazardous substance in the Blow Tank #1 was removed in a manner that did not endanger a worker, and /or

The defendant failed to take the reasonable precaution of planning and adequately coordinating various Blow Tank #1 work activities, including the cleaning of the inside of this tank to render it free from hazardous substances and the gas testing of this tank, before welding-related work was performed on the tank.

Sworn before me at the
Assermenté devant moi au

this / 5 day of OCT. yr. 12
le jour de an

THUNDER BAY

24

Judge or Justice of the Peace in and for the Province of Ontario
Juge ou juge de paix dans et pour la province d'Ontario

Sec. 24 / art. 24

Informant
Dénonciateur

☐ Summons for
Sommons pour

yr.
an

☐ Confirmed on
Confirmée le

yr.
an

Justice of the Peace
Juge de paix

Date Date	Defendant Défendeur	Pleas / Plaids Guilty to Counts / Coupable sous les chefs	Pleas / Plaids Not Guilty to Counts / Non coupable sous les chefs	Found Guilty on Counts Déclaré coupable sous les chefs	Not Guilty on Counts Déclaré non coupable sous les chefs

Date

☐ In Absentia / Défaut de comparution

counts / chefs d'accusation

Fined \$ & \$
Amende de \$ et

Costs. Time to pay
\$ de frais. Délai de paiement

Date of Birth
Date de naissance D / J M Y / A

Probation
Période de probation de

Sentenced to Imprisonment for
Peine d'emprisonnement de

☐ withdrawn
accusation(s) retirée(s)

☐ sentence suspended
condamnation avec sursis

counts / chefs d'accusation

Fined \$ & \$
Amende de \$ et

Costs. Time to pay
\$ de frais. Délai de paiement

Date of Birth
Date de naissance D / J M Y / A

Probation
Période de probation de

Sentenced to Imprisonment for
Peine d'emprisonnement de

☐ withdrawn
accusation(s) retirée(s)

☐ sentence suspended
condamnation avec sursis

counts / chefs d'accusation

Fined \$ & \$
Amende de \$ et

Costs. Time to pay
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condamnation avec sursis

counts / chefs d'accusation

Fined \$ & \$
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Probation
Période de probation de

Sentenced to Imprisonment for
Peine d'emprisonnement de

☐ withdrawn
accusation(s) retirée(s)

☐ sentence suspended
condamnation avec sursis

Judge or Justice of the Peace in and for the Province of Ontario
Juge ou juge de paix dans et pour la province d'Ontario

No. of Information / N° de la dénonciation
Return Date of Summons / Sommons rapportée le November 23rd , yr. / an 2012

INFORMATION Against / DENONCIATION Visant

Terrace Bay Pulp Inc.

1120 Premier Way, Thunder Bay, Ontario, P7B 0A3
--

ADDRESS

CHARGE: / ACCUSATION :

- 1) s.78 of O.Reg 851/90, contrary to s.25(1)(c) of the OHSA
- 2) contrary to s.25(2)(a) of the OHSA
- 3) contrary to s.25(2)(h) of the OHSA

Venshore Mechanical Ltd.
1019 Northern Avenue, Thunder Bay, ON P7C 5L6

- 4) s.78 of O.Reg 851/90, contrary to s.25(1)(c) of the OHSA
- 5) contrary to s.25(2)(a) of the OHSA
- 6) contrary to s.25(2)(h) of the OHSA

Alain Zborowski
315 Newman Street, Schreiber, ON P0T 2S0

- 7) s.78 of O.Reg 851/90, contrary to s.27(1)(a) of the OHSA
- 8) contrary to s.27(2)(c) of the OHSA

Arthur Szczepanlak
10 Southridge Cr. Terrace Bay, ON P0T 2W0

- 9) s.78 of O.Reg 851/90, contrary to s.27(1)(a) of the OHSA
- 10) contrary to s.27(2)(c) of the OHSA

Joseph Mykietyn
112 Mountinside Road, Schreiber, ON P0T 2W0

- 11) s.78 of O.Reg 851/90, contrary to s.27(1)(a) of the OHSA
- 12) contrary to s.27(2)(c) of the OHSA

☒ Summons / Sommons	☐ Warrant / Mandat	☐ Arrest / Arrestation
Reportable M.V. / Rapportable V.M.	C.V.O.R. No. (Commercial Vehicles Only) / Numéro C.V.U. (véhicules utilitaires seulement)	
Offence (H.T.A. 210) / Code de la route 210		
Report I.M.		
Sex / Sexe	Birth Date / Date de naissance	Was defendant owner? / Le défendeur était-il propriétaire?
Day / Jour	Month / Mois	Year / Année
		Yes / Oui ☐ No / Non ☐
Driver's Licence Number / Numéro du permis de conduire		
Plate No. / Numéro de plaque		
☐ Involves an Accident / Intervention reliée à un accident		
Informant / Dénonciateur		
Date Sworn / Date d'asseurement		
Officer / Agent de police		
No. / N°		
Div. / Div.		
Courtroom / Salle d'audience		
Courtroom 1		
At / A		
10:30am		
110 N. Archibald Street, Thunder Bay, ON		

This is Exhibit "D" referred to in the
Affidavit of Line Forester sworn the
8th day of May, 2013

A handwritten signature in blue ink, appearing to read "Elizabeth Brust", is written above a horizontal line.

A Commissioner, etc.

Elizabeth Brust

NORTHWEST REGION

27

AFFIDAVIT OF SERVICE OF SUMMONS
AFFIDAVIT DE SIGNIFICATION DE L'ASSIGNATION

ONTARIO COURT OF JUSTICE
COUR DE JUSTICE DE L'ONTARIO
PROVINCE OF ONTARIO
PROVINCE DE L'ONTARIO

Under Subsection 26(6) of the Provincial Offences Act
En vertu du paragraphe 26(6) de la Loi sur les infractions provinciales

I, ROBERT GARRITY
Je soussigné(e),

of THE MINISTRY OF LABOUR
de(du)

a provincial offences officer make oath and say as follows, that on the
un agent des infractions provinciales, déclare sous serment que le

16th day of OCTOBER, yr. 2012
jour de an

I did serve the summons in the manner indicated below:
j'ai signifié l'assignation de la manière suivante :

(CHECK ONE / COCHER LA CASE APPLICABLE)

- (a) ☐ by delivering it personally to the Defendant;
en la remettant en main propre à la partie défenderesse;
- (b) ☐ I could not conveniently find the Defendant and left the summons for him/her at his / her last known or usual place of abode
la partie défenderesse ne pouvant être commodément trouvée, en laissant l'assignation à son intention, à sa dernière
adresse connue ou sa résidence habituelle en la remettant

with
à

an inmate thereof who appeared at least sixteen years of age;
une personne habitant les lieux qui m'a semblé avoir au moins 16 ans;

- (c) ☐ service on a municipal corporation: by leaving it personally with
signification à une municipalité : en la remettant en main propre à

the _____
(name / nom) le(la) (position / titre)
(the mayor, reeve, warden, or other chief officer, or the Clerk of the Corporation / maire, préfet, président du conseil de comté, ou autre dirigeant ou secrétaire de la municipalité)

☐ at the address shown on the summons / à l'adresse figurant sur l'assignation

☐ at / à(au) _____

- (d) ☒ service on a corporation other than a municipal corporation: by leaving it personally with
signification à toute autre personne morale : en la remettant en main propre à

JOHN A. JACIK the PRESIDENT/DIRECTOR
(name / nom) le(la) (position / titre)

WOLF GARRICK
(manager, secretary, or other executive officer of the corporation, or person apparently in charge of the branch office thereof /
directeur, secrétaire ou autre dirigeant, ou personne ayant manifestement la responsabilité de la succursale)

☒ at the address shown on the summons / à l'adresse figurant sur l'assignation

☐ at / à(au) _____

- (e) ☐ by mailing it by registered mail to the corporation at
en l'envoyant par courrier recommandé à la personne morale à(au)

an address held out by the corporation to be its address
l'adresse indiquée par la personne morale comme la sienne

- (f) ☐ by mailing it by registered mail to the Defendant, who is not a resident in Ontario,
en l'envoyant par courrier recommandé à la partie défenderesse, qui ne réside pas en Ontario,

at / à(au) _____

his / her last known or usual place of abode.
sa dernière adresse connue ou sa résidence habituelle.

Sworn before me at THUNDER BAY
Assermenté devant moi à(au)

this 15 day of OCT, 20 12
ce jour de

No.
N°

Signature

Div.
Div.

Justice of the Peace in and for the Province of Ontario/Commissioner
for Taking Affidavits / Juge de paix dans et pour la province de
l'Ontario/Commissaire à l'assementation

NORTHWEST REGION

SUMMONS
ASSIGNATION

Under Section 24 of the Provincial Offences Act
Aux termes de l'article 24 de la Loi sur les infractions provinciales

ONTARIO COURT OF JUSTICE
COUR DE JUSTICE DE L'ONTARIO
PROVINCE OF ONTARIO
PROVINCE DE L'ONTARIO

Form / Formule 104
Courts of Justice Act
Loi sur les tribunaux judiciaires
R.R.O. / R.R.O. 1990
O. Reg. / Règl. de l'Ont. 200

To
A
of
de(du)

Terrace Bay Pulp Inc.
1120 Premier Way
Thunder Bay, ON P7B 0A3

Whereas you have been charged before me that you,
Attendu que vous avez été accusé(e) devant moi d'avoir

on or about the / le ou vers le 31st day of / jour de October, yr. / an 2011 at / à the Township of Terrace Bay, in the Northwest
Region, in the Province of Ontario

did commit the offence of / commis l'infraction suivante

failing as an employer, to ensure that the measures and procedures prescribed by section 78 of Ontario Regulation 851/90,
R.S.O. 1990, as amended, were carried out in the workplace located at 21 Mill Road, Terrace Bay Township, Ontario contrary to
section 25(1)(c) of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1., as amended.

Particulars: The defendant failed to ensure that a tank or container to which repairs or alterations were to be made was
drained and cleaned or otherwise rendered free from any explosive, flammable or harmful substance.

[AND FURTHER THAT, you have been charged with two (2) additional offences as set out in the Appendix to this Summons.]

contrary to Occupational Health and Safety Act
contrairement à

section 25(1)(c); 25(2)(a); 25(2)(h)
article

THEREFORE YOU ARE COMMANDED IN HER MAJESTY'S NAME TO APPEAR BEFORE THE ONTARIO COURT OF JUSTICE
À CES CAUSES, VOUS ÊTES SOMMÉ(E), AU NOM DE SA MAJESTÉ, DE COMPARAÎTRE DEVANT LA COUR DE JUSTICE DE L'ONTARIO

at 110 N. Archibald Street, Thunder Bay, Ontario
à (au)

on the 23rd day of November, 20 12, at 10:30 am
le jour de , 20 12, à (time / heure) .m.
at Courtroom 1 h

(courtroom / salle d'audience)

and to appear thereafter as required by the court to be dealt with according to law.
et de comparaître par la suite selon les exigences du tribunal, afin d'être traité(e) selon la loi.

Issued at
Délivré à
this 15 day of OCT, 20 12
ce jour de

Judge of Justice of the Peace in and for the Province of Ontario
Juge ou juge de paix dans et pour la province de l'Ontario

NOTICE TO DEFENDANT

You may appear personally, or by agent or counsel.

If you do not appear:

- a) the court may issue a warrant for your arrest, or
- b) your trial may proceed in your absence and evidence be taken, and
- c) if you are convicted, you could be sentenced in your absence, and
- d) depending on the offence of which you have been convicted, you could be sentenced to jail and a warrant issued for your arrest.

If you do appear:

- a) the trial may proceed; or
- b) you, or the prosecutor, may ask the court to adjourn your case to another date. The court may grant or refuse such a request.

REMARQUE à la partie défenderesse :

Vous pouvez comparaître personnellement, par mandataire, ou par un avocat.

Si vous ne comparez pas :

- a) le tribunal peut émettre un mandat d'arrestation à votre rencontre,
- b) votre procès peut se dérouler en votre absence et des témoignages entendus,
- c) si vous êtes reconnu(e) coupable, votre peine pourrait être prononcée en votre absence,
- d) selon l'infraction pour laquelle vous avez été condamné(e), vous pourriez recevoir une peine d'emprisonnement et un mandat d'arrestation pourrait être émis à votre rencontre.

Si vous comparez :

- a) le procès peut être tenu ; ou
- b) vous pouvez, vous ou le poursuivant, demander au tribunal un ajournement. Le tribunal peut accorder ou refuser cette demande.

FOR INFORMATION OR ACCESS
TO ONTARIO COURTS
FOR PERSONS WITH DISABILITIES, CALL
1-800-387-4456
TORONTO AREA 416-326-0111



POUR PLUS DE RENSEIGNEMENTS SUR L'ACCÈS
DES PERSONNES HANDICAPÉES
AU TRIBUNAL DE L'ONTARIO, COMPOSEZ LE
1 800 387-4456
RÉGION DE TORONTO 416-326-0111

This is Exhibit "E" referred to in the
Affidavit of Line Forester sworn the
8th day of May, 2013



A Commissioner, etc.

Elizabeth Broth



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Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

October 23, 2012

Marc Flynn
Dir: 416-863-2685
marc.flynn@blakes.com

VIA E-MAIL

Reference: 00071942/000004

Ms. Line Forestier, Crown Counsel
Ministry of Labour
Legal Services Branch
400 University Avenue
11th Floor
Toronto, ON M7A 1T7

RE: Summons of the Ontario Court of Justice Pursuant to Section 24 of the Provincial Offences Act (Ontario) dated October 10, 2012 (the "Summons")

Dear Ms. Forestier:

We are special insolvency counsel to Terrace Bay Pulp Inc. ("Terrace Bay"). Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) dated July 19, 2012, Terrace Bay has sold and transferred the pulp mill and all or substantially all of the related business assets to a third party purchaser, and the purchaser has continued the employment of substantially all of the former Terrace Bay employees. Terrace Bay is no longer operating any business and has no employees.

By Summons received October 10, 2012, Terrace Bay has been summoned to appear before the Ontario Court of Justice on November 23, 2012 in connection with the charges brought by the Crown against Terrace Bay pursuant to the *Occupational Health and Safety Act* (Ontario) (the "OHSA") and certain of its former employees arising out of an industrial accident which occurred on October 31, 2011 (the "OHSA Proceeding").

Pursuant to the order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated January 25, 2012 (as amended and restated, the "Initial Order"), all proceedings against Terrace Bay were stayed and suspended pending further order of the Court as a result of Terrace Bay's filing under the *Companies' Creditors Arrangement Act* (the "CCAA"). Paragraph 10 of the Initial Order provides that no proceeding or enforcement process in any court or tribunal shall be commenced or continued against or in respect of Terrace Bay, or affecting its business or property, except with the written consent of Terrace Bay and Ernst & Young Inc., in its capacity as the court-appointed monitor of Terrace Bay, or with leave of the Court, and any and all such proceedings currently under way against or in respect of Terrace Bay or affecting its business or property are stayed and suspended pending further order of the Court, except as permitted by section 11.1 of the CCAA. Responding to the issues raised by the Summons will involve significant time, resources and will deplete the funds available to creditors of Terrace Bay. A copy of the Initial Order (without schedules) is enclosed with this letter.

12598645.1

Blakes

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Page 2

It is Terrace Bay's position that the OHSA Proceeding and the Summons, are stayed and suspended and, accordingly, Terrace Bay is not required to appear in accordance with the Summons on November 23, 2012.

If a conviction is entered against Terrace Bay in the OHSA Proceeding, the associated remedy is wholly financial or monetary in nature. The purpose of the OHSA Proceeding is to determine whether certain penalties under the OHSA can be applied against Terrace Bay. If the statutory penalties were levied against Terrace Bay, the Crown would be a creditor of Terrace Bay for the quantum ordered by the Ontario Court of Justice in connection with the OHSA Proceeding. Even if the Crown was able to obtain a conviction such that the statutory penalties would apply, the stay of proceedings would continue to prevent the Crown from taking steps to enforce its rights as a creditor against Terrace Bay. Moreover, any claim of the Crown against Terrace Bay, as a result of the OHSA Proceeding or otherwise, is an unsecured claim in the CCAA proceedings in respect of Terrace Bay, and is subordinate to the claims of Terrace Bay's secured creditors. Terrace Bay may not have sufficient funds to make a distribution to unsecured creditors in the CCAA proceedings, including the Crown in the event that it has a claim against Terrace Bay (which is not admitted).

Terrace Bay would incur a substantial financial obligation in responding to the Summons and mounting a defense in the OHSA Proceeding. Any funds spent by Terrace Bay in responding to the OHSA Proceeding are funds directed away from creditors participating in the CCAA proceedings. Any financial obligation incurred in responding to the OHSA Proceeding would only assist the Crown in quantifying its claim against Terrace Bay, and provides no benefit to other creditors of Terrace Bay.

On October 29, 2012, Terrace Bay is seeking an extension of the stay of proceedings until April 30, 2013. A copy of this letter will be included as an exhibit to the affidavit of Wolfgang Gericke to be sworn on or about October 23, 2012, in support of the relief sought, including the extension of the stay of proceedings. If the Crown disputes the position taken by Terrace Bay in this letter, it should be prepared to speak to the matter at the motion on October 29th, 2012.

Given the stay of proceedings that is in place, we trust that the Crown will take no further steps in the OHSA Proceeding without leave of the Court. Should you have any questions with respect to the position taken in this letter, I would be pleased to discuss the same with you.

Yours very truly,



per Marc Flynn

Marc Flynn

FLY
Enclosure

12598645.1

Court File No. CV-12-9566-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

JUSTICE MORAWETZ

)
)
)

WEDNESDAY, THE 25TH

DAY OF JANUARY, 2012

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
 ARRANGEMENT OF TERRACE BAY PULP INC.

The Applicant

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by Terrace Bay Pulp Inc. (the "Applicant"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Wolfgang Gericke sworn January 24, 2012 and the Exhibits thereto (collectively, the "Gericke Affidavit"), the report of Ernst & Young Inc. ("E&Y") as proposed Monitor dated January 24, 2012, the affidavit of Nancy Thompson sworn February 1, 2012, the Initial Order of Mr. Justice Morawetz dated January 25, 2012 (the "Initial Order"), the Supplemental Initial Order of Mr. Justice Morawetz dated February 2, 2012, the Second Supplemental Initial Order of Mr. Justice Morawetz dated February 7, 2012, the affidavit of Wolfgang Gericke sworn February 15, 2012, and the Second Report of E&Y in its capacity as Monitor dated February 15, 2012 and on being advised that the Province of Ontario as

represented by the Minister of Northern Development and Mines (formerly the Minister of Northern Development, Mines and Forestry) (the "Province") does not oppose the relief sought in this Application, and on hearing the submissions of counsel for the Applicant, the Province and E&Y and on reading the consent of E&Y to act as the Monitor and on hearing the submissions of counsel for The Corporation of the Township of Terrace Bay (the "Township") and the Trustee (as defined in the Gericke Affidavit) in respect of the relief set out in paragraph 32 hereof, no one appearing for the Construction Lien Claimants (as defined in the Gericke Affidavit) in connection therewith, although duly served in accordance with the terms of the Initial Order,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant shall be authorized

and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) payment for goods or services actually supplied to the Applicant before and following the date of this Order in connection with the repairs to and/or replacement of equipment damaged in connection with the October 31 Accident (as defined in the Gericke Affidavit) provided that the Monitor approves of each payment for goods or services provided before the date of this Order; and
- (c) payment for goods or services actually supplied to the Applicant following the date of this Order.

7. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services, harmonized sales or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

8. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

9. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations,
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

10. THIS COURT ORDERS that until and including April 27, 2012, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities, including, without limitation, warehousemen, storers or bailees or construction lien claimants (all of the foregoing being, collectively, "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent

the registration of a claim for lien under the *Construction Lien Act* (the "CLA"). In order to preserve the time limitations provided for by the provisions of the CLA, the Construction Lien Claimants are hereby permitted to commence actions (and where relevant, register a corresponding certificate of action) in respect of such liens in accordance with the CLA, provided that such actions will be subject to the stay imposed by this Order. Any such actions commenced under this sub-paragraph (iv) on or after February 16, 2012 must be served on the Applicant and the Monitor within 5 days of issuance by the applicable Court office.

NO INTERFERENCE WITH RIGHTS

12. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, and the Applicant shall be entitled to possession of its Property, wherever situate, without any interference of any kind from any Person, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

13. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

14. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

15. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

16. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings (including in respect of any environmental condition that arose or environmental damage that occurred after the date hereof, and excluding, for greater certainty, in respect of any environmental condition that arose or environmental damage that occurred prior to the date hereof), except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

17. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property in an

unlimited amount as security for the indemnity provided in paragraph 16 of this Order. The Directors' Charge shall have the priority set out in paragraphs 30 and 32 herein.

18. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 16 of this Order.

APPOINTMENT OF MONITOR

19. THIS COURT ORDERS that E&Y is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

20. THIS COURT ORDERS that (a) E&Y, in its sole discretion, may suspend performance of any of its remaining duties as the Monitor of the Applicant in the First CCAA Proceedings (as defined in the Gericke Affidavit) namely Court File No. CV-09-8062-00CL, and that E&Y and the Applicant are free to seek such further and other Order, advice and directions as may be considered necessary or desirable in relation to the First CCAA Proceedings, including the remaining duties of E&Y as Monitor in those proceedings; and (b) the liabilities and obligations of the Applicant to E&Y pursuant to paragraph 23 of the Order made by this Court on July 27, 2010 in the First CCAA Proceedings remain in full force and effect, shall be paid by the Applicant and are hereby secured by the Administration Charge (as defined below).

21. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;

- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicant in its preparation of the Applicant's cash flow statements;
- (d) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, including being at liberty to retain and utilize the services of entities related to the Monitor as may be necessary to perform its duties hereunder; and
- (h) consult with and assist the Applicant as requested in its negotiations and discussions with suppliers, customers, creditors and other stakeholders;
- (i) consult with and assist the Applicant with the Sales Process (as defined below);
- (j) perform such other duties as are required by this Order or by this Court from time to time.

22. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

23. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.
24. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.
25. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.
26. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard

rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis, and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant (i) any accounts outstanding relating to the preparation for this Application and (ii) retainers in the amounts of \$100,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

27. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

28. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$750,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings and paragraph 20 of this Order. The Administration Charge shall have the priority set out in paragraphs 30 and 32 hereof.

29. THIS COURT ORDERS that the Applicant is authorized to pay a retainer in the amount of \$20,000 to the independent counsel for the OHS Employees (as defined in the Gericke Affidavit.)

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

30. THIS COURT ORDERS that the priorities of the Directors' Charge, and the Administration Charge, as among them, shall be as follows:

First -- Administration Charge (to the maximum amount of \$750,000); and

Second -- Directors' Charge (in an unlimited amount).

31. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, or the Administration Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
32. THIS COURT ORDERS that each of the Directors' Charge and the Administration Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, including but not limited to the Encumbrances in favour of the Province, the Township, the Trustee and the Construction Lien Claimants, and, for greater clarity, and with the agreement of Her Majesty the Queen in Right of Ontario ("HMORO"), this Court further orders that, notwithstanding the existence and ranking of any charge against real property securing the costs of remedying any environmental condition or environmental damage referenced in section 11.8(8) of the CCAA (each and any, a "Section 11.8(8) Charge"), amounts secured by the Administration Charge shall be paid in priority to any claims of the HMORO secured by a Section 11.8(8) Charge, including from the sale proceeds of any real property subject to a Section 11.8(8) Charge.
33. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge or the Administration Charge, unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.
34. THIS COURT ORDERS that the Directors' Charge and the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy*

and *Insolvency Act* of Canada (the "BIA"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicant pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

SALES PROCESS

35. THIS COURT ORDERS that the Applicant, with the assistance of the Monitor, is hereby authorized to conduct a process (the "Sales Process") for the solicitation of offers in accordance with the Sale Process Terms attached hereto as Schedule A (the "Sales Process Terms") for the sale of the Assets as defined therein, and is authorized to take such steps as are necessary or advisable in carrying out the Sales Process in accordance with the Sale Process Terms, with such modifications, amendments or extensions of time as the Applicant and the Monitor may deem appropriate in the circumstances.

36. THIS COURT ORDERS that the Applicant and the Monitor may obtain advice and directions from the Court with respect to the Sales Process.

37. THIS COURT ORDERS that the Applicant, with the assistance of the Monitor, is hereby authorized to market the Non-Business Assets (as defined in the Gericke Affidavit) in a manner determined by the Applicant, with the assistance of the Monitor, to be the most appropriate for each such Non-Business Asset.

BSI EMPLOYEES

38. THIS COURT ORDERS that the Applicant is authorized to enter into a services agreement substantially in the form of the Temporary Services Agreement attached as Exhibit "B" to the Gericke Affidavit in respect of the BSI Employees, and the Applicant is hereby authorized to make payments to the BSI Employees as contemplated in the Gericke Affidavit.

SERVICE AND NOTICE

39. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

40. THIS COURT ORDERS that the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

41. THIS COURT ORDERS that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or

other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at www.ey.com/ca/terracebay.

GENERAL

42. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

43. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

44. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

45. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is 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, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

46. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order, other than paragraphs 17, 28 and 32, on not less than seven (7) days notice 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.

47. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

A handwritten signature, likely "J. H. Harris", is written over a horizontal line.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

FEB 16 2012

MB

This is Exhibit "F" referred to in the
Affidavit of Line Forester sworn the
8th day of May, 2013



A Commissioner, etc.

Ernest B. Bost



Ontario

49

Ministry of the
Attorney General

Ministère du
Procureur Général

Ministry of Labour
Legal Services Branch

Ministère du Travail
Direction des services juridiques

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October 24, 2012

Direct Line: 416-326-7987

VIA FACSIMILE: 416 863-2653

Marc Flynn
Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000
Commerce Court West
Toronto ON M5L 1A9

Dear Mr. Flynn,

RE: R. v. Terrace Bay Pulp Inc. et. al.; Our File No. 20260
First Appearance Date: November 23, 2012 – 110 N. Archibald Blvd
Courtroom 1 at 10:30 a.m.

Thank you for your letter dated October 23, 2012.

The Ministry of Labour is a regulatory body that exercises powers including those set out in the *Occupational Health and Safety Act* ("OHSA") for the benefit and well-being of workers in the province of Ontario and is not restricted by an insolvency situation from properly carrying out its duties. Terrace Bay Pulp Inc. is facing OHSA charges relating to an explosion that occurred at its premises on October 31, 2011 and that resulted in the death of a worker. Two other workers employed by a different employer were also injured.

Subsection 11.1 of the *Companies' Creditors Arrangement Act* ("CCAA"), copy enclosed for your convenience, in my view applies in the circumstances and specifically permits this OHSA regulatory prosecution to proceed.

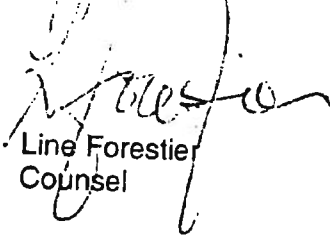
Should your client wish to dispute the Ministry's right to proceed with this prosecution, it's my understanding that subsection 11.1(2) requires your client to bring an application before the Ontario Superior Court of Justice (Commercial List). Since the Ministry has not received notice nor any application material, please note I am not in a position to attend Court on October 29, 2012 – the date of your motion to extend the stay of proceedings under the CCAA.

I note your letter to me has been included in the affidavit material filed for the motion to extend the stay of proceedings. Kindly ensure my response including the attachment is brought to the Court's attention on October 29, 2012.

In the absence of a Court order stating otherwise, the Crown is of the view your client is required to attend court on November 23, 2012 as stated in the properly issued and served summons. Should your client not attend, the Crown will consider its various options including proceeding ex parte.

If you wish to discuss, please contact me at your earliest convenience.

Yours truly,



Line Forestier
Counsel

Enclosures

Companies' Creditors Arrangement Act

R.S.C. 1985, c. C-26

(...)

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

Regulatory bodies — order under section 11.02

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

Exception

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

- (a) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and
- (b) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

Declaration — enforcement of a payment

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

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

(...)

This is Exhibit "G" referred to in the
Affidavit of Line Forester sworn the
8th day of May, 2013



A Commissioner, etc.

Elizabeth Brosh



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November 16, 2012

Marc Flynn
Dir: 416-863-2685
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VIA E-MAIL

Reference: 00071942/000004

Ms. Line Forestier, Crown Counsel
Ministry of Labour
Legal Services Branch
400 University Avenue, 11th Floor
Toronto, ON M7A 1T7

RE: Proceeding commenced against Terrace Bay Pulp Inc. in connection with charges under the Occupational Health and Safety Act (Ontario)

Dear Ms. Forestier:

As you know, we are special insolvency counsel to Terrace Bay Pulp Inc. ("Terrace Bay"), and Terrace Bay has been summoned pursuant to a summons received October 10, 2012 (the "Summons") to appear before the Ontario Court of Justice on November 23, 2012 (the "First Appearance"). The First Appearance is in connection with charges brought by the Crown against Terrace Bay and certain of its former employees pursuant to the *Occupational Health and Safety Act* (Ontario) (the "OHSA"), arising out of an industrial accident which occurred on October 31, 2011 (the "OHSA Proceeding").

For the reasons set out in my letter dated October 23, 2012, Terrace Bay takes the position that the OHSA Proceeding is stayed, pursuant to the order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated January 25, 2012, as amended and restated.

Pursuant to the order of the Court dated October 29, 2012, the stay was extended to April 30, 2013. Terrace Bay currently intends to seek a further extension of the stay on or before April 30, 2013 and wishes to address the issue of whether or not the stay applies to the OHSA Proceeding on the same motion, in order to minimize costs and preserve funds available for distribution to Terrace Bay's creditors.

In the interim, Terrace Bay's position is that any steps in the OHSA Proceeding should be adjourned pending the hearing of Terrace Bay's motion. Please advise if you will consent to an adjournment of the Summons until April 2013.

Yours very truly,

Marc Flynn

per Marc Flynn

FLY

22306392.3

This is Exhibit "H" referred to in the
Affidavit of Line Forester sworn the
8th day of May, 2013



A Commissioner, etc.

Elizabeth Bost



Ministry of the
Attorney General

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55

November 22, 2012

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Marc Flynn
Blake, Cassels & Graydon LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9

Dear Mr. Flynn,

RE R. v. Terrace Bay Pulp Inc.; Our File No. 20260
Charges under the *Occupational Health and Safety Act*

Thank you for your letter dated November 16th, 2012. As per my conversations on November 13th and 21st with your colleague Kristina Desimini, I confirm the Crown is not prepared to consent to adjourn the above-noted prosecution for 5 months to April 2013 at tomorrow's first appearance in Thunder Bay. The Crown must oppose such a request as this prosecution must proceed in a timely manner. I note there are four co-defendants involved including three individuals who are facing similar charges and whose charter right to a timely trial would be negatively affected by such a long adjournment.

Yours truly,

Line Forestier
Crown Counsel

LF/ck

This is Exhibit "I" referred to in the
Affidavit of Line Forester sworn the
8th day of May, 2013



A Commissioner, etc.

Elizabeth Bost

MEMORANDUM OF UNDERSTANDING

- between -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
as represented as the Attorney General**

- and -

THE CORPORATION OF THE CITY OF THUNDER BAY

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MEMORANDUM OF UNDERSTANDING

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as
represented by the Attorney General**

(herein referred to as "the Attorney General")

OF THE FIRST PART

- and -

THE CORPORATION OF THE CITY OF THUNDER BAY

(herein referred to as "the Municipal Partner")

OF THE SECOND PART

WHEREAS the Attorney General recognizes that under the *Streamlining of Administration of Provincial Offences Act*, 1997, S.O. 1998, c.4, (Bill 108) future improvements in service delivery to the public for local justice matters can best be achieved in partnership with local governments;

AND WHEREAS the Attorney General has invited the Municipal Partner into the provincial court system as a justice partner;

AND WHEREAS the Municipal Partner has demonstrated its commitment to engage in full partnership with the Attorney General to assume justice responsibilities under the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended (hereinafter "*the Act*");

AND WHEREAS the Attorney General has the power under the *Act* to enter into an agreement authorizing the Municipal Partner to perform all courts administration and court support functions under the *Act* and prosecutions of matters commenced under Parts I and II of the *Act*;

AND WHEREAS the Attorney General continues to be responsible for the integrity of the administration of justice, the Attorney General will enter into a Memorandum of Understanding (which shall contain the same terms and conditions as this Memorandum of Understanding) with every Municipal Partner;

NOW THEREFORE in consideration of the mutual covenants set forth below, the Attorney General and the Municipal Partner agree as follows:

1.0 GENERAL

- | | | |
|---------------------------------|-----|--|
| Parts of the transfer agreement | 1.1 | The Memorandum of Understanding and its Schedules (referred to collectively as the "MOU"), the Local Side Agreement (referred to as the "LSA"), and any amendments to any of these executed by the Attorney General and the Municipal Partner shall form a document to be known as the Transfer Agreement. |
| Court service area | 1.2 | The obligations of the Municipal Partner pursuant to the Transfer Agreement relate to the functions transferred under the Transfer Agreement in the court service area described in Schedule 5 of the MOU. |
| Transfer components | 1.3 | <p>The Attorney General transfers, under the Transfer Agreement, the following functions to the Municipal Partner;</p> <ul style="list-style-type: none"> 1.3.1 the courts administration and court support functions, including the functions of the clerk of the court, for proceedings commenced under Parts I, II and III of the <i>Act</i> carried out by the Attorney General prior to the transfer, excluding some court administration and all court support functions on appeals of these matters; 1.3.2 the prosecution of proceedings commenced under Part I of the <i>Act</i> carried out by the Attorney General prior to the transfer, except those excluded by paragraphs 1.4 and 1.5 of the MOU or by the LSA; 1.3.3 the prosecution of any other proceedings commenced under Part I of the <i>Act</i>, subsequently transferred to the Municipal Partner; 1.3.4 the prosecution of proceedings commenced under Part II of the <i>Act</i>, carried out by the Attorney General prior to the transfer; 1.3.5 the prosecution of matters designated as contraventions under the <i>Contraventions Act</i> (Canada) and commenced under Part I of the <i>Act</i>, except those excluded by paragraph 1.4 or 1.5 of the MOU or by the LSA; 1.3.6 the conduct of appeals of proceedings commenced under Parts I and II of the <i>Act</i> where the Attorney General transferred the prosecution of the proceeding to the Municipal Partner under the Transfer Agreement; and, |

1.3.7 Notwithstanding paragraph 1.3.6, where the Attorney General files an appeal in relation to a matter commenced under Part I of the Act the Attorney General shall conduct the prosecution of the appeal.

**Exception court
administration and
court support**

1.4 Notwithstanding anything else in the Transfer Agreement, court administration and court support functions relating to proceedings commenced under the Act shall not be transferred in respect of proceedings where any of the following conditions exist:

1.4.1 the proceeding is against a young person as defined in Part VI of the Act;

1.4.2 criminal proceedings have also been commenced in relation to the same circumstances; or

1.4.3 the defendant who is charged with a criminal offence pleads guilty to a substituted provincial offence or a substituted offence that has been designated as a contravention under the *Contraventions Act* (Canada).

**Exception
Prosecutions**

1.5 Notwithstanding anything else in the Transfer Agreement, the conduct of the prosecution carried out by the Attorney General prior to the transfer for the following matters shall not be transferred to the Municipal Partner:

1.5.1 prosecution of proceedings commenced under Part I of the Act described in paragraph 1.4 of the MOU or as set out in the LSA;

1.5.2 prosecution of proceedings commenced under Part I of the Act where a proceeding has also been commenced under Part III of the Act in relation to the same circumstances;

1.5.3 prosecution of proceedings commenced under Part III of the Act, but the Municipal Partner shall continue to prosecute offences under municipal by-laws, the Fire Code, the Building Code and any other matters for which the Municipal Partner was responsible before the Transfer Agreement comes into effect, including any new requirements under the *Fire Protection and Prevention Act*, 1997, S.O. 1997 c.4;

- 1.5.4 prosecution of offences designated as contraventions under the *Contraventions Act* (Canada) and that are commenced under Part III of the *Act*, that do not relate to the unlawful standing, stopping or parking of a motor vehicle.
- Exception parking contraventions** 1.6 Notwithstanding anything else in the Transfer Agreement, offences that relate to the unlawful standing, stopping or parking of a motor vehicle and designated as contraventions under the *Contraventions Act* (Canada) and commenced under Part II or Part III of the *Act* shall be administered and prosecuted in accordance with any agreement made under sections 65.2 and 65.3 of the *Contraventions Act* (Canada).
- Other ministry right to intervene** 1.7 Notwithstanding anything else in this Transfer Agreement, where the Attorney General transfers to the Municipal Partner the prosecution of proceedings that were, prior to the transfer, carried out by the Attorney General, on behalf of another Ministry other than the Ministry of the Attorney General, the Attorney General shall retain the right to intervene, on behalf of such other Ministry, in a proceeding and conduct the prosecution, and where necessary an appeal, and the cost of any such prosecution and appeal shall be borne by that Ministry.
- No agency** 1.8 Employees, agents, contractors, members of council and officers of the Municipal Partner shall not be deemed to be employees, agents or officials of Ontario.
- Attorney General right to intervene** 1.9 Nothing in the Transfer Agreement affects the Attorney General's right to intervene in a proceeding. Where the Attorney General develops an intervention policy with respect to particular proceedings under the *Act*, the Municipal Partner acknowledges that once it is informed, it will adhere to the policy.
- Contents of MOU** 1.10 The MOU sets out standards for the conduct of prosecutions, for the administration of the courts and for the provision of court support services, and sanctions for failure to meet the standards, in accordance with subsections 162(3) and 162(4) of the *Act*.
- Effective date** 1.11 This MOU shall take effect from the date on which the Local Side Agreement is signed by or on behalf of the Attorney General after having been signed by the Municipal Partner and shall remain in effect unless suspended, terminated or revoked, regardless of whether there is a change in the person of the Attorney General or in the council or councils of the Municipal Partner.
- Goal: modern, efficient justice system** 1.12 The Attorney General and the Municipal Partner shall work together to improve services to the public with the goal of putting in place the most modern, efficient and effective justice system attainable.

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Municipal partner accountability	1.13	In fulfilling its responsibilities under the Transfer Agreement, the Municipal Partner is accountable to the public who are receiving court services, its serviced municipalities, other municipal partners, Ontario and the Government of Canada.
No discrimination	1.14	In fulfilling its responsibilities under the Transfer Agreement, the Municipal Partner shall ensure that there is no discrimination under the <i>Human Rights Code</i> , R.S.O. 1990, c.H.19, and that there is no discrimination in the performance of functions under the Transfer Agreement on the basis of place of residence.
No impact on powers and duties of judiciary	1.15	Nothing in the Transfer Agreement shall be taken to affect the powers, duties and appointment of the judiciary, including the powers, duties and appointment of justices of the peace pursuant to the <i>Justices of the Peace Act</i> , R.S.O. 1990, c.J.4, the powers and duties of the Associate Chief Judge - Co-ordinator of Justices of the Peace or of the Chief Judge of the Ontario Court (Provincial Division).
No alteration to enforcement	1.16	Nothing in the Transfer Agreement shall be construed so as to alter the roles and functions of police services and other law enforcement agencies, as otherwise required by law.
	2.0	PRINCIPLES OF TRANSFER: INTEGRITY OF THE ADMINISTRATION OF JUSTICE, JUDICIAL INDEPENDENCE AND FAIR HEARING
Guiding principles	2.1	In fulfilling their roles and responsibilities under the Transfer Agreement, the parties recognize and shall respect and adhere to the following guiding principles:
Judicial independence	2.1.1	The independence of the judiciary shall be preserved.
Public confidence in justice system	2.1.2	The confidence of the public in the justice system must be maintained through every effort by all parties. To this end, open access to the system and a fair and timely process must be assured.
Fairness and natural justice	2.1.3	The fundamental tenets of procedural fairness and natural justice shall be affirmed and upheld.
Separation of prosecution and police	2.1.4	The separation of the prosecutorial function and the policing function shall be assured.

Attorney General's
responsibility

- 2.1.5 The Attorney General will continue to be responsible for the integrity of the administration of justice in Ontario, pursuant to the *Ministry of the Attorney General Act*, R.S.O. 1990, c. M.17.

French language
services

- 2.1.6 The officially bilingual court system in Ontario, as prescribed by the *Courts of Justice Act*, R.S.O. 1990, c. C.43, continues, including the provision of a prosecutor who speaks French and English when a bilingual trial is requested on a charge that is covered by the Transfer Agreement. In areas that are or become designated under the *French Language Services Act*, R.S.O. 1990, c. F.32, out-of-court services in French must be provided at the same levels as are provided by the Attorney General.

No political
intervention

- 2.1.7 The entire justice process, from the laying of charges through to final disposition of appeals, shall continue to operate independently and free from political intervention.

3.0 DEFINITIONS

- 3.1 In the Transfer Agreement the following terms, words and phrases shall have the following meaning, except where the context clearly indicates otherwise:

Court service area

- 3.1.1 "Court Service Area" means the geographic area as described in Schedule 5 of the MOU, in which the transferred court services and prosecution services are provided;

Exit audit

- 3.1.2 "Exit Audit" means an audit conducted by the Attorney General and an independent auditor prior to the date that the Municipal Partner begins performing the functions transferred to it under the Transfer Agreement. The scope of the exit audit shall be determined by the Attorney General in consultation with the Municipal Partner. The results of the audit shall be provided to the Municipal Partner within a reasonable time of its completion.

Fiscal year

- 3.1.3 "Fiscal Year" means the 12 month period for which the financial statements of the Municipal Partner are prepared in accordance with the *Municipal Act*, R.S.O. 1990, c.M. 45;

Interim Audit

- 3.1.4 "Interim Audit" refers to the first phase of the Exit Audit conducted by or on behalf of the Attorney General prior to the signing of the Local Side Agreement.

**Intermunicipal
service agreement**

3.1.5 "Intermunicipal Service Agreement" means an agreement between the Municipal Partner and one or more serviced municipalities as referred to in paragraph 5.3.5 of the MOU;

**Local side
agreement**

3.1.6 "Local Side Agreement" or "LSA" means an agreement executed between the Attorney General and the Municipal Partner dealing with matters specific to the court service area, or that are not provided for in the MOU or in law;

Municipal partner

3.1.7 "Municipal Partner" means the municipality or municipalities or other organizations that have entered into the Transfer Agreement with the Attorney General.

Ontario

3.1.8 "Ontario" includes the Ministry of the Attorney General and other Ministries of the Government of Ontario;

Review committee

3.1.9 "Review Committee" means a provincial committee established pursuant to section 172 of the *Act*, whose composition and functions are determined by regulation made under clause 174 (c) of the *Act*; and as further specified in the MOU;

**Serviced
municipality**

3.1.10 "Serviced Municipality" means a municipality or other organization for which court administration, court support or prosecution services transferred under this Transfer Agreement are provided by the Municipal Partner in the court service area as described in Schedule 5 of the MOU;

**Streamlining
phase**

3.1.11 "Streamlining Phase" means the period of time beginning on the day after the last day of the Transition Phase; and

Transition phase

3.1.12 "Transition Phase" means the period of time beginning on the date that the first Transfer Agreement pursuant to subsection 162(1) of the *Act* is signed to the date that is six months following the date on which the last Transfer Agreement is signed, thereby completing the transfer of functions in all court service areas.

**Notice re: phase
dates**

3.2 For the purpose of the definitions of "Streamlining Phase" and "Transition Phase", the Attorney General shall notify the Municipal Partner of the respective dates once they are ascertained.

4.0 INTERPRETATION

- | | | |
|--|-----|---|
| Interpretation re: principles | 4.1 | The Transfer Agreement shall be interpreted in such a way as to give effect to the Principles set out in paragraph 2.0 of the MOU. |
| Conflicts between LSA and MOU | 4.2 | In the event of any conflict between the provisions of the LSA and the provisions of the MOU including its schedules, the provisions of the MOU shall prevail. |
| Conflict between transfer agreement and law | 4.3 | The Transfer Agreement shall not affect, modify or interfere with the rights, duties and responsibilities of the Attorney General or the Municipal Partner at law. If there is a conflict between one or more of the provisions of the Transfer Agreement and the laws of Ontario or of Canada, the law shall prevail and the conflicting provision shall be of no force or effect. Where the Transfer Agreement provides for a higher standard than the minimum standard provided by law, this shall not be deemed to be a conflict for the purpose of this provision. |
| Severability of clauses | 4.4 | If any one or more of the provisions of the Transfer Agreement is held by a court of competent jurisdiction to be voidable or <i>ultra vires</i> , the provision or provisions shall be severed from the Transfer Agreement. The rest of the Transfer Agreement shall continue in force according to its terms and conditions and, provided that the context allows, its provisions shall be interpreted in the same way as they would have been had the severance not taken place. |
| Amendments incorporated | 4.5 | The Transfer Agreement may be amended at any time during the term of the Agreement, following the process set out in paragraph 12.0. The amendment must be made in writing and executed by both parties. Any such amendment or amendments shall be deemed to be incorporated into and become part of the Transfer Agreement. |
| Deemed amendment where legislation has changed | 4.6 | The Transfer Agreement shall, if necessary, be deemed to have been amended to accord with any changes to the <i>Act</i> , the regulations made thereunder; the <i>Contraventions Act</i> , (Canada) and the regulations and schedules made thereunder; and any other legislation and regulations that have an impact on the Transfer Agreement. |
| Marginal notes - no effect | 4.7 | Marginal notes beside the paragraphs shall have no legal effect, and shall not be considered in construing the Transfer Agreement. |

5.0 ROLES AND RESPONSIBILITIES OF THE PARTIES

5.1 The Attorney General is responsible for:

Policy/legislative reviews

5.1.1 conducting policy and legislative reviews of the *Act* and the regulations made under it;

Advising of legislative and policy changes

5.1.2 advising the Municipal Partner in a timely manner of legislative or government policy changes that have an impact on the Transfer Agreement;

Proposing legislative amendments

5.1.3 proposing amendments to the *Act* before the Legislature or making or amending regulations;

Monitoring

5.1.4 monitoring the performance of the Municipal Partner's responsibilities under the Transfer Agreement, to ensure all standards are met;

Sanctions

5.1.5 imposing sanctions set out in this MOU where the Municipal Partner does not meet the standards referred to in paragraph 5.1.4;

Review committee

5.1.6 establishing a Review Committee prior to the end of the Transition Phase, whose composition and functions shall be determined by regulation made pursuant to the authority in clause 174(c) of the *Act*;

Transition training

5.1.7 determining the training needs to facilitate the transfer of functions under the Transfer Agreement, such training to be provided and funded by Ontario; and,

Exit audit

5.1.8 the performance of an exit audit, such audit to be funded by Ontario.

Delegation by the Attorney General

5.2 The Attorney General may delegate any powers, duties or responsibilities under the Transfer Agreement to any government official or employee except a decision pursuant to section 171 of the *Act*.

5.3 The Municipal Partner shall:

Performance of duties under transfer agreement

5.3.1 carry out its duties and obligations in accordance with the terms and conditions of the Transfer Agreement, and in particular the Principles set out in paragraph 2.0 of the MOU, and in accordance with the *Act* and all other relevant legislation and regulations;

Same range and level of service delivery as Attorney General

5.3.2 provide, at minimum, the same services and level of service delivery as were provided by the Attorney General before the transfer. Where there is a variance between the services and the level of service identified in the interim audit and the standards set out in this MOU and its schedules, the manner in which this variance will be addressed will be set out in the LSA.

French language services continue

5.3.3 continue to provide out-of-court services in the French language, where those services were provided by the Attorney General before the transfer, in areas designated under the *French Language Services Act*, R.S.O. 1990, c. F.32, including introducing such services if part or all of the court service area becomes designated under that Act after the effective date of the Transfer Agreement;

Bilingual prosecutor

5.3.4 provide a prosecutor who speaks French and English when a bilingual trial is requested on a charge that is covered by the Transfer Agreement;

Intermunicipal service agreement

5.3.5 maintain an intermunicipal service agreement with all serviced municipalities which includes obligations and arrangements regarding court administration, court support, prosecutions, reporting, revenue-sharing and local dispute resolution;

Perform duties re: serviced municipalities

5.3.6 carry out its duties and obligations to serviced municipalities as specified in the Transfer Agreement and in the intermunicipal service agreement;

Operations process review

5.3.7 participate in a review of the operations process during the streamlining phase;

Consult re: changes in procedure or processes

5.3.8 consult with the Attorney General, and such other interested parties as the Attorney General may direct, with regard to changes in procedural guidelines; prosecutorial, court administration or court support processes; and changes to case management procedures and court master plans, it being understood that any changes to case management procedures and court master plans are subject to the approval of the judiciary;

Establish complaints process

5.3.9 establish and maintain a process for dealing with complaints to ensure expeditious and effective resolution of day-to-day issues by the Municipal Partner at the local level.

**Reporting
contentious
matters**

5.3.10 ensure that matters that may be significant or contentious including, but not limited to, alleged prosecutorial impropriety or misconduct or constitutional challenges are brought to the attention of the Attorney General as expeditiously as possible.

**Privacy and
confidentiality
guidelines**

5.3.11 if not already established, develop guidelines to be used by elected officials and employees for the protection of privacy and confidentiality of personal information;

**Conflict of interest
guidelines**

5.3.12 if not already established, develop conflict of interest guidelines to be used by elected officials and employees in accordance with the principles, responsibilities and standards set out in the Transfer Agreement, and shall file the conflict of interest guidelines with the Attorney General;

**Single source
purchase of forms**

5.3.13 purchase sequentially numbered charge and service related documents and other court related forms as required from a single source, as approved by the Attorney General, in accordance with paragraph 6.0 of Schedule 2; and

Enforcement

5.3.14 collect and enforce fines authorized under subsections 165(1) and (2) of the *Act* in accordance with the *Act*, related regulations and any other enforcement proceedings authorized by law.

**Municipal partner
agreement with
third party**

5.4 The Municipal Partner may enter into an agreement with a third party in accordance with paragraph 9.0 of Schedule 2 of the MOU, with the Attorney General's consent.

**Third party - same
standards as
municipal partner**

5.5 An agreement between the Municipal Partner and a third party for the performance of any function under the Transfer Agreement shall include a provision which deems the third party to be the Municipal Partner's agent at all times and binds it to the Transfer Agreement's provisions.

**Municipal partner
to follow general
policy**

5.6 Where the Municipal Partner enters into an agreement for the acquisition of services relating to its obligations under the Transfer Agreement, the Municipal Partner shall follow generally accepted procedures or its existing policy and procedures relating to the acquisition of services, provided such procedures meet the minimum requirements set out in Schedule 2, paragraph 9.0 of the MOU.

6.0 REVENUES AND COSTS

- | | | |
|---|-----|--|
| Authority to collect and enforce fine payments | 6.1 | The Municipal Partner has the authority to collect fines, fees, costs and surcharges and enforce their payment, pursuant to subsections 165(1) and (2) of the <i>Act</i> . Collection, enforcement and disbursement of revenue are to be carried out as specified in the Transfer Agreement, the Municipal Partner's intermunicipal service agreement and relevant legislation and regulations. |
| Monies to be separated and identified | 6.2 | All monies received by the Municipal Partner in respect of fines, surcharges and fees pursuant to paragraph 6.1 of the MOU are to be separated and clearly identified in the books of the Municipal Partner and are subject to audit in accordance with paragraph 9.0 of the MOU. |
| Separate trust account | 6.3 | All monies received by the Municipal Partner in respect of fines, surcharges and fees that are payable to Ontario pursuant to subsection 165(5) of the <i>Act</i> , are to be separated and clearly identified in the books of the Municipal Partner and are subject to audit in accordance with paragraph 9.0 of the MOU. All such monies owing shall be remitted to Ontario in a timely manner. |
| Payment of Attorney General costs | 6.4 | The Municipal Partner shall remit to the Minister of Finance, in a timely manner, any amounts owing pursuant to clause 165(5)(c) of the <i>Act</i> , for costs incurred by the Attorney General for adjudication and prosecution and for monitoring and enforcing the Transfer Agreement. The method for calculating the amounts owing to the Minister of Finance shall be specified in the LSA. |
| Net revenue division | 6.5 | Revenues, net of amounts calculated and remitted in accordance with subsections 165(5) and (6) of the <i>Act</i> , shall be retained by the Municipal Partner. The net revenue, including revenue from fines under the Fire Code under the <i>Fire Protection and Prevention Act</i> , 1997, S.O. 1997 c.4, may be divided between the Municipal Partner and serviced municipalities in accordance with their intermunicipal service agreement, any relevant legislation, regulation and municipal by-laws. The Municipal Partner shall remit any monies owing to serviced municipalities and to other municipal partners, in a timely manner. |
| Fines imposed before transfer | 6.6 | In accordance with clauses 166(a) & (b) of the <i>Act</i> , the Municipal Partner may collect, enforce and retain fines that were imposed before the Transfer Agreement was executed. |

7.0 ACCESS AND OWNERSHIP

Access to
information,
records, etc.

- 7.1 Subject to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, Ontario shall permit the Municipal Partner to have access to such information, data and records, including software data and the relevant information contained therein, as the Municipal Partner may require to carry out its obligations under the Transfer Agreement. Ontario shall at all times retain ownership rights to the data, information, operating systems and software.

No warranty re:
information

- 7.2 Ontario shall use reasonable efforts to ensure that the information to which the Municipal Partner will have access is reliable and accurate, but does not guarantee the accuracy or completeness of such information.

Use of data

- 7.3 The Municipal Partner shall not sell or otherwise provide to any other person or organization any of the data or information to which it is permitted access pursuant to the Transfer Agreement, or extract from the information or data, or create from the information or data, lists of personal or other information for any purpose other than for the purpose of its obligations under the Transfer Agreement.

Transfer of assets

- 7.4 The Attorney General may, in accordance with Ontario's policies, transfer to the Municipal Partner such premises, vehicles, furniture and equipment presently owned or used by Ontario in the carrying out of court services, as may be agreed upon by the parties and as specified in the LSA.

Attorney General's
efforts re:
municipal
partner's
assumption of
contracts

- 7.5 The Attorney General shall use reasonable efforts to assist the Municipal Partner in assuming contracts and in obtaining rights to licences and leases currently held or entered into by Ontario.

8.0 ACCOUNTING REQUIREMENTS

Detailed accounts
and records

- 8.1 The Municipal Partner shall, during the term of the Transfer Agreement and for four years following the termination, expiry or revocation of the Transfer Agreement, maintain detailed and accurate accounts, records, books and data of all financial transactions undertaken by it pursuant to the Transfer Agreement, prepared in accordance with generally accepted accounting principles (GAAP).

Adequate financial
controls

- 8.2 The Municipal Partner shall ensure that there are adequate financial controls in place at the premises of the Municipal Partner, and for greater certainty, shall use its best efforts to

ensure the protection of the accuracy, completeness and auditability of all financial data, the segregation of responsibilities in the accounting function, and shall institute adequate management controls.

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Semi-annual
reports to Attorney
General

- 8.3 The Municipal Partner shall maintain accurate accounting and reconciliation records for each court location in its court service area, including data on the amount of revenue collected and the amount outstanding and shall, within two months after the end of the preceding 6 month period, or as otherwise directed by the Attorney General, prepare and submit semi-annual reports to the Attorney General.

Annual report

- 8.4 The Municipal Partner shall on or before March 31 in each year during the term of the Transfer Agreement and in the year following its termination, expiry or revocation, prepare and submit to the Attorney General an Annual Report for the previous fiscal year on the performance of its obligations under the Transfer Agreement.

Form of reports

- 8.5 Reports prepared by the Municipal Partner may be submitted in electronic or paper form or both, as determined by the Attorney General.

9.0 AUDIT REQUIREMENTS

Annual financial
audit

- 9.1 Each year during which the Transfer Agreement is in effect, the Municipal Partner shall, at its own cost, have prepared and submitted to the Attorney General and the Ministry of Finance annual audited financial statements for its fiscal year, together with the requisite supporting schedules, certified by an independent public accounting firm. The certification shall state that the firm has examined the accounts, records, books and data relating to the transactions undertaken by the Municipal Partner pursuant to the Transfer Agreement, in accordance with generally accepted auditing standards and shall express an opinion that they are fairly presented in accordance with the provisions of the Transfer Agreement.

If third party or
serviced
municipality
performs
municipal partner
function-audit
required

- 9.2 Where the Municipal Partner enters into an agreement with a third party, or a Serviced Municipality, to perform any of its functions pursuant to the Transfer Agreement, the Municipal Partner shall at its own cost have prepared and submitted to the Attorney General and the Ministry of Finance, annual audited financial statements for the Municipal Partner's fiscal year, together with the requisite supporting schedules, certified by an independent public accounting firm. The certification shall state that the firm has examined the accounts, records, books and

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data relating to the transactions undertaken by the third party or Serviced Municipality pursuant to its agreement and the Transfer Agreement in accordance with generally accepted auditing standards, and shall express an opinion that they are fairly presented in accordance with the provisions of both agreements.

- Discretionary audit** 9.3 The Attorney General may in its discretion and at any time cause an audit to be made of the Municipal Partner's accounts, records, books and data related to transactions undertaken by the Municipal Partner pursuant to the Transfer Agreement and for this purpose the Attorney General or its agents may enter onto the premises of the Municipal Partner or its assignees, with reasonable notice, and the Municipal Partner and its assignees shall co-operate fully. The Attorney General shall provide the results of the audit to the Municipal Partner within a reasonable time of its completion.
- Management process audit** 9.4 The Attorney General or its agents may at any time undertake or require to be undertaken a management process audit related to the obligations of the Municipal Partner under the Transfer Agreement, and for this purpose the Attorney General or its agents may enter onto the premises of the Municipal Partner or its assignees, with reasonable notice, and the Municipal Partner and its assignees shall co-operate fully. The Attorney General shall provide the results of the audit to the Municipal Partner within a reasonable time of its completion.
- Municipal partner's own audit** 9.5 Where the Municipal Partner carries out any audit in relation to its obligations under the Transfer Agreement, it shall provide the results to the Attorney General within a reasonable time of its completion.
- Business hours access to records, etc. by Attorney General** 9.6 For the purpose of ensuring performance of the terms and conditions of the Transfer Agreement, the Attorney General or its agents shall during regular business hours have direct and unrestricted access to all books, records, files, manuals, systems, and any other pertinent documentation, papers, things and property belonging to, or in use by, and to all persons employed by the Municipal Partner, or its assignees associated with or related to the Transfer Agreement, except such as may be sealed under statute or by order of a court.
- Provincial auditor** 9.7 The accounts, records, books and data related to transactions undertaken by the Municipal Partner pursuant to the Transfer Agreement may be audited by the Provincial Auditor.
- Audit expenses** 9.8 The Municipal Partner shall bear all costs and expenses for audits under paragraphs 9.1, 9.2 and 9.5, and where audits performed under paragraphs 9.3 or 9.4 report a material breach of any standard or requirement under the Transfer Agreement.

10.0 OPERATIONAL REPORTING REQUIREMENTS

Reporting
rationale

- 10.1 The purpose of the reporting requirements under the Transfer Agreement is to facilitate effective operational planning, performance measurement, early identification and early-stage resolution of issues, and the sharing of best practices.

Accurate
statistical data

- 10.2 The Municipal Partner shall use its best efforts to ensure the accuracy and availability of the following data for each court location in its court service area for functions transferred under the Transfer Agreement:

10.2.1 number of charges received, by case number and statute, subdivided into Parts I, II and III of the *Act*;

10.2.2 number of charges disposed and their dispositions;

10.2.3 number of charges sentenced with sentence types;

10.2.4 number of trial requests, including requests for French trials;

10.2.5 courtroom utilization by person type and session type;

10.2.6 average time from service date to trial;

10.2.7 number of appeals and their dispositions;

10.2.8 number of charges pending, with future court date;

10.2.9 incidence of error in data transmission to provincial ministries;

10.2.10 changes to court master plans;

10.2.11 number of charges received with or without completion date; and

10.2.12 any other data necessary to meet the reporting requirements.

Municipal partner
to ensure that data
is available

- 10.3 The Municipal Partner shall ensure that the information referred to in paragraph 10.2 is available as required by the judiciary, the Crown Attorney, the staff of the Ministry of the Attorney General and the staff of the Government of Canada.

Accurate
operational data

10.4 The Municipal Partner shall keep an accurate record of the incidence and manner of resolution of the following:

10.4.1 disputes and complaints and their source, including any matter that proceeds through the dispute resolution process set out in paragraph 13.0 of the MOU;

10.4.2 conflicts of interest;

10.4.3 breaches of ethics or law in the performance of functions under the Transfer Agreement; and

10.4.4 financial or administrative irregularities.

Reports quarterly

10.5 The Municipal Partner shall prepare and submit to the Attorney General quarterly reports in relation to matters referred to in paragraph 10.4 of the MOU.

Report on
significant matter
forthwith

10.6 If a matter referred to in paragraph 10.4 of the MOU may affect the proper administration of a statute, or is a matter that can reasonably be expected to attract substantial public interest, the Municipal Partner shall advise the Attorney General forthwith.

Requested reports

10.7 Notwithstanding anything else in the Transfer Agreement, the Attorney General may at any time request any kind of report from the Municipal Partner, and the Municipal Partner shall use its best efforts to comply with the request in a timely manner.

Form of reports

10.8 Reports prepared by the Municipal Partner may be submitted in electronic or paper form or both, as determined by the Attorney General.

11.0 CONFIDENTIALITY

Personal
information
exchange

11.1 The Transfer Agreement requires that personal information be exchanged between Ontario and the Municipal Partner.

Exchange of
information
between parties

11.2 An agreement between:

11.2.1a Municipal Partner and a serviced municipality;

11.2.2a Municipal Partner and a third party;

11.2.3 Ontario and a third party; or

11.2.4 any of the parties

may require that personal information be exchanged between the parties.

FOIPOP Acts'
application

- 11.3 The disclosure and the exchange of information referred to in paragraphs 11.1 and 11.2 of the MOU are authorized by subsection 42(e) of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, and by subsection 32(e) of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56.

12.0 AMENDMENTS TO THE MOU

- Request to amend** 12.1 Either party may at any time make a written request to amend the terms and conditions of the MOU.
- Reason for the request** 12.2 Any request to amend shall set out the reasons for the request and shall include any explanatory or supporting documents.
- Notice to municipal partners** 12.3 Where the Attorney General makes a request to amend the terms and conditions of the MOU or where the Municipal Partner and the Attorney General agree to the Municipal Partner's requested amendment, the Attorney General shall notify all municipal partners in writing of the requested amendment.
- Written response** 12.4 Any Municipal Partner may respond to the notice of a request for an amendment by providing a written response to the Attorney General within 30 days of receiving a copy of the notice of the request to amend. Where a Municipal Partner fails to respond within the 30 day period, it will be deemed not to oppose the amendment.
- Agreement to amend** 12.5 Where the Attorney General and all municipal Partners agree to amend the MOU, the amendment shall be made in writing and shall form part of the Transfer Agreement.
- Dispute re: amendment** 12.6 Where the Attorney General and the Municipal Partner, including any Municipal Partner who receives notice under paragraph 12.3, disagree with the requested amendment and the issue can not be resolved, the Attorney General or any Municipal Partner may invoke the dispute resolution mechanism set out in paragraph 13.0 of the MOU.

13.0 DISPUTE RESOLUTION

- Principle** 13.1 The parties agree to foster and participate in a co-operative approach to the resolution of disputes arising under the Transfer Agreement. The parties also agree that all reasonable efforts will be made to resolve disputes informally and amicably at an early stage at the local level.

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Scope	13.2	In the event that a dispute arises between the Attorney General and the Municipal Partner with respect to the terms and conditions of the Transfer Agreement, the parties to this Transfer Agreement agree to use the mechanism set out in this paragraph to resolve the dispute.
Exception - judiciary	13.3	The provisions of this paragraph do not apply to issues relating to the judiciary.
Mediation to be considered	13.4	Where the parties to this Transfer Agreement are unable to resolve a dispute without the assistance of a neutral third party, the parties shall consider using the services of a mediator to facilitate resolution of the dispute.
Role of mediator	13.5	Where the parties to this Transfer Agreement agree to use the services of a mediator, the parties shall jointly select the mediator and the cost of the mediator's services shall be shared equally by the parties. The mediator shall inquire into the issues in dispute and shall attempt to assist the parties in resolving the dispute. All information exchanged during the mediation process shall be for the purpose of resolving the issues in dispute, and therefore shall be treated as confidential.
Referral to review committee	13.6	Whether or not a mediation has taken place, if the parties to this Transfer Agreement are unable to resolve the dispute, the matter may be referred by either party, in writing, to the Review Committee for recommendations, with written notice to the other party.
Review committee - referring party	13.7	A party referring a dispute to the Review Committee, shall identify the issues in dispute and shall provide the Review Committee with any supporting material upon which the party intends to rely.
Review committee - responding party	13.8	The responding party shall provide the Review Committee and the referring party with a written response, and any supporting material upon which it intends to rely, within 30 days of receiving notice that the matter has been referred to the Review Committee.
Recommendation of review committee	13.9	The Review Committee may recommend to the parties how the matter ought to be resolved, and shall provide the parties with a reasonable amount of time to implement the recommendations.
Failure to implement Recommendations	13.10	Where the Municipal Partner fails to implement a recommendation of the Review Committee within the time period set by the Review Committee, the Review Committee may invoke the compliance provisions set out in paragraph 1.0 of Schedule 3 of the MOU.

Court remedy
preserved

- 13.11 Nothing in the Transfer Agreement precludes a party to the Transfer Agreement from submitting a dispute to a court of competent jurisdiction.

14.0 LIMITATION OF LIABILITY

No liability for
municipal partner,
employees, etc.

- 14.1 Ontario shall not be liable or responsible in any way for any injury or damages whether physical or economic, direct or consequential, of any kind (including death) that may be suffered or sustained by the Municipal Partner, or any member of council, officer, employee, agent, contractor, member of the judiciary, accused person, police officer or any other person who may be in, or in the vicinity of, a courtroom or court office administered by the Municipal Partner, or for any loss or theft of, or damage or injury to, any property belonging to the Municipal Partner or members of council, officers, employees, agents, contractors, members of the judiciary, accused persons, police officers or any other person, while such property is in, or in the vicinity of, a courtroom or court facility administered by the Municipal Partner.

15.0 INDEMNIFICATION

Municipal partner
to indemnify
Ontario for its
action, etc. re:
transfer.

- 15.1 The Municipal Partner shall indemnify and save harmless Ontario, its officers, employees, agents and contractors, from all manner of claims, losses, costs, expenses, actions or proceedings of any kind or nature whatsoever based on, occasioned by or attributable to anything done or omitted to be done by the Municipal Partner or by its members of council, officers, employees, agents or contractors in connection with the Transfer Agreement, or with the performance of the Municipal Partner's obligations under the Transfer Agreement.

Ontario to
indemnify
Municipal Partner
for its actions,
etc. re: transfer

- 15.2 Ontario shall indemnify and save harmless the Municipal Partner, its members of council, officers, employees, agents and contractors, from all manner of claims, losses, costs, expenses, actions or proceedings of any kind or nature whatsoever based on, occasioned by or attributable to anything done or omitted to be done by Ontario or by its officers, employees, agents or contractors in connection with the Transfer Agreement, or with the performance of Ontario's obligations under the Transfer Agreement.

16.0 INSURANCE

Claims against
Municipal Partner

- 16.1 The Municipal Partner shall protect itself from and against all claims that might arise from anything done, purported to be done or omitted to be done under the Transfer Agreement by the

Municipal Partner, its members of council, officers, employees, agents or contractors.

**Comprehensive
general liability
insurance policy**

- 16.2 For the purpose of paragraph 16.1 of the MOU, and without restricting the generality of that paragraph, the Municipal Partner shall, at its own expense, maintain in full force and effect during the term of the Transfer Agreement, a policy of comprehensive general liability insurance, in form and substance acceptable to Ontario and written by a responsible carrier or carriers acceptable to Ontario, providing coverage for a limit of not less than five million dollars (\$5,000,000.00) per occurrence for any cause of action, demand or claim with respect to personal injury (including death) or property damage, including loss of use thereof, and for any cause of action, demand or claim arising out of or occurring in connection with the obligations of the Municipal Partner under the Transfer Agreement, including, but not limited to, a cause of action, demand or claim with respect to defamation; false arrest, detention, imprisonment; malicious prosecution; contravention of rights guaranteed under the *Canadian Charter of Rights and Freedoms*; and errors and omissions insurance.

**Required clauses
for policy**

- 16.3 The policy of insurance referred to in paragraph 16.2 of the MOU shall include the following terms:
- 16.3.1 a clause adding Her Majesty the Queen in Right of Ontario as represented by the Attorney General, its officers, employees, agents and contractors as additional named insureds;
 - 16.3.2 a cross-liability insurance clause endorsement acceptable to Ontario;
 - 16.3.3a clause requiring the insurer to provide 30 days' prior written notice to Ontario in the manner set forth in the policy in the event of the termination, expiry, variation or non-renewal of the policy;
 - 16.3.4 a clause providing that the protection for Ontario under the policy will not be affected in any way by any act or omission of the Municipal Partner, its members of council, officers, employees, agents or contractors; and
 - 16.3.5 a clause including liability arising out of contract or agreement.

Proof of Insurance

- 16.4 The Municipal Partner shall, immediately upon request, provide Ontario with proof of the insurance coverage in the form of a certificate, and a copy of the relevant portion or portions of the policy that incorporate the terms and clauses set out in paragraph 16.3 of the MOU.

17.0 TERMINATION WITH OR WITHOUT CAUSE

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**Termination
without cause**

17.1 Either party may terminate the Transfer Agreement without cause by giving nine months' express written notice to the other party.

**Termination with
cause**

17.2 Either party may terminate the Transfer Agreement with cause by giving one month's express written notice to the other party.

17.3 Where termination notice is given:

**Transfer of
intellectual and
other property
during termination
period**

17.3.1 the Municipal Partner shall provide to the Attorney General unfettered access to any property requested by the Attorney General including, but not limited to, systems, records, data, information and material in the possession or control of, or owned by, the Municipal Partner as may be required to ensure the continued effective administration of justice;

**Property rights on
termination**

17.3.2 all rights in the property described in paragraph 17.3.1 of the MOU transferred by Ontario to the Municipal Partner, and any records, data, information and material accumulated during the performance of the Transfer Agreement shall vest in and become the property of Ontario, and the Municipal Partner shall immediately transfer such property to the Attorney General; and

Termination plan

17.3.3 the Municipal Partner shall either cease or continue to perform functions under the Transfer Agreement during the notice period in accordance with a termination plan approved by the Attorney General.

**Access to
transferred
property**

17.4 Notwithstanding paragraph 17.3.2;

17.4.1 the Municipal Partner shall be entitled to access all transferred property, including the right to make and keep copies of documents, where the Municipal Partner is named or otherwise becomes a party to any legal proceedings, or is put on notice that it will be named as a party in legal proceedings, arising from or in connection with the performance by the Municipal Partner of its functions under the Transfer Agreement; and

17.4.2 property shall not include property purchased by the Municipal Partner from the Attorney General or a third party unless otherwise agreed to by the parties.

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Components of termination plan	17.5	The termination plan referred to in paragraph 17.3.3 of the MOU may include provisions for the transfer of any courts administration, court support or prosecution functions from the Municipal Partner to any replacement or alternative Municipal Partner or other entity, named by the Attorney General.
Duty to Inform	17.6	The Municipal Partner shall keep the Attorney General informed of all matters that are necessary for the Attorney General to ensure the effective ongoing administration of justice during the termination period.
Appointment of a manager	17.7	In the event of termination, the Attorney General may appoint a person to manage the termination for the purpose of ensuring the continued effective administration of justice.
Reconciliation of finances	17.8	On termination, the Municipal Partner shall carry out a financial accounting and shall pay to Ontario any monies owing to Ontario including the Ministry of Finance.
Rights of Attorney General	17.9	The rights of the Attorney General under this paragraph are in addition to and do not derogate from any other rights and remedies of the Attorney General under the Act or the Transfer Agreement or otherwise at law.

18.0 RIGHT OF ASSIGNMENT

Attorney General's consent required	18.1	The Municipal Partner has no right to assign, sublease, subcontract, transfer, cede, offer for sale, deal or offer to deal in or with the Transfer Agreement, or any rights or obligations hereunder, in whole or in part (the foregoing collectively called an "assignment") unless the Attorney General has given or is deemed to have given consent to such assignment. The Municipal Partner shall ensure that any assignee undertaking any of the Municipal Partner's obligations to Ontario shall be bound by the terms and conditions of the Transfer Agreement. The Municipal Partner shall not be released of its obligations to Ontario by reason of the assignment, and the Municipal Partner shall be deemed to be liable for any breaches of the Transfer Agreement, or of any legislation or regulations, by the assignee.
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19.0 COMMUNICATION BETWEEN THE PARTIES

Method of service	19.1	Unless otherwise directed by the Attorney General, any written communication shall be given by personal service, by facsimile transmission or electronic mail, or by prepaid first class mail. If personally served or transmitted by facsimile or electronic mail, a communication shall be deemed to be validly given to and received by the addressee on the date of such service or
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transmission. A transmission completed after 4:30 p.m. shall be deemed to have been delivered on the next business day. A communication sent by prepaid first class mail shall be deemed to be validly given to and received by the addressee on the fifth business day after the day on which it was mailed in Canada.

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Municipal
partner's address

19.2 The Municipal Partner's address and facsimile number for communications are:

**Office of the City Clerk
500 Donald Street East
P.O. Box 800
Thunder Bay, Ontario P7E 5V3
Attention: Elaine Bahlleda, City Clerk
FAX: (807) 623-5468**

Attorney General's
address

19.3 The Attorney General's address and facsimile number for communications are:

**Ministry of the Attorney General
720 Bay Street, 2nd Floor
Toronto, Ontario M5G 2K1
Attention: Assistant Deputy Attorney General
Court Services Division
FAX: (416) 326-2592**

Change of address

19.4 When either party changes its address, phone or facsimile number, it shall give written notice forthwith to all other parties.

Attorney General
contact person

19.5 The Attorney General shall designate a person and an alternate who will be the primary contacts for all issues and communications related to the Transfer Agreement.

Municipal Partner
contact person

19.6 The Municipal Partner shall designate a person and an alternate who will be the primary contacts for all issues and communications related to the Transfer Agreement.

Change of
contacts

19.7 Each of the parties shall keep the other informed of the names of its contact person and alternate person.

20.0 WAIVER OF BREACH

Waiver of breach

20.1 Any breach of any provision of the Transfer Agreement may be waived in whole or in part by a party without prejudice to that party's rights in the event of the breach of any other provision of the Transfer Agreement. A waiver shall be binding on the waiving party only if it is in writing. The waiver of any breach of any provision of the Transfer Agreement shall not be taken or held to be a waiver of any further breach of the same provision or any breach of any other provision.

21.0 SURVIVAL

- Survival** 21.1 The provisions of paragraphs 4.6, 7.1, 7.3, 8.0, 9.0, 11.0, 14.0, 15.0, 16.0, 17.3 to 17.9, 21.0 and Schedule 2, paragraphs 2.10, 3.1, 3.2, 3.3 shall survive the suspension, termination, revocation or expiry of the Transfer Agreement.

22.0 SCHEDULES

- Schedules** 22.1 The following Schedules are attached to this agreement and shall form a part of this Memorandum of Understanding:

Schedule 1: Prosecutorial Standards

Schedule 2: Operational Standards

Schedule 3: Compliance and Performance Measures

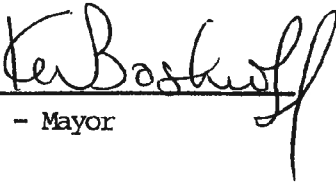
Schedule 4: Existing Contracts

Schedule 5: Court Service Area

IN WITNESS WHEREOF the parties hereto have executed this
Memorandum of Understanding.

DATED AT THUNDER BAY THIS 8th DAY OF AUGUST 2000.

THE CORPORATION OF THE CITY OF THUNDER BAY



Ken Boshcoff - Mayor

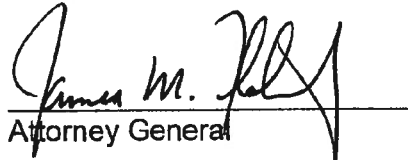


M. Elaine Bahlleda - City Clerk

DATED AT Toronto THIS 10th DAY OF August 2000.

HER MAJESTY THE QUEEN IN
RIGHT OF ONTARIO, as represented
by the Attorney General

Witness



Attorney General

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TERRACE BAY PULP INC.

Applicant
Court File No. CV-12-9566-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD

MINISTRY OF THE ATTORNEY GENERAL

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Counsel for the Her Majesty the Queen in right of
Ontario as represented by the Ministry of Labour