



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
1 Place Ville Marie
Suite 3000
Montréal QC H3B 4N8 Canada
Tel: 514-982-4000 Fax: 514-982-4099

Bernard Boucher

Partner

Dir: 514-982-4006

bernard.boucher@blakes.com

February 28, 2023

VIA EMAIL AND COURIER

Reference: 11573/375

Supreme Court of Canada

301 Wellington
Ottawa, Ontario K1A 0J1

Attention: Mtre. Chantal Carbonneau, Registrar

Re: SCC Court File: 40625

***Agence du Revenu du Québec c. FTI Consulting Canada et al.
In the Matter of the Companies' Creditors Arrangement Act ("CCAA") of Bloom Lake
General Partner Limited et al. ("CCAA Proceedings")***

**Response by Cliffs Québec Iron Mining ULC ("CQIM") to the Application for Leave to
Appeal before the Supreme Court of Canada by Agence du Revenu du Québec ("RQ")**

Dear Mtre. Carbonneau:

This letter is sent on behalf of CQIM in response to RQ's Application for Leave to Appeal ("**RQ Application**") before the Supreme Court of Canada ("**SCC**") in relation to the judgment rendered on December 22, 2022 ("**QCA Decision**") by the Québec Court of Appeal ("**QCA**"), which affirmed the decision rendered on November 8, 2021 ("**First Instance Decision**"), by Mr. Justice Michel A. Pinsonnault (the "**CCAA Judge**").

In a decision issued on December 10, 2021 on the issue of discretion in deciding whether to authorize pre/post-filing set-off ("**Deloitte**")¹, this Court stated the following:

[85] In exercising its discretion under the CCAA, a court must keep three baseline considerations in mind: (1) the appropriateness of the order being sought, (2) due diligence and (3) good faith on the applicant's part (Callidus, at para. 49; Century Services, at para. 70).

We will briefly discuss below the application of the first consideration. Neither the QCA nor the RQ Application considered the remaining considerations. As a starting point, it is important to emphasize that with respect to the possibility of a judge to exercise their judicial discretion to

¹ *Montréal (City) v. Deloitte Restructuring Inc.*, [2021 SCC 53](#)

8846931.4


authorize set-off between pre/post-filing claims (“**Pre-post Set-Off**”), this Court has stated in *Deloitte* that it should only be allowed in “exceptional”² or “rare” circumstances.³

In paragraph 86 of *Deloitte*, this Court stated that for a Court to determine the appropriateness of allowing Pre-Post Set-Off, the Court must consider the remedial objectives of the CCAA more fully enumerated in such paragraph. However, nowhere does the Court state that to decide a request to permit Pre-Post Set-Off, a Court has to take into account all of these objectives. Therefore, while assessing such a request, a CCAA judge has to decide the relative weight that he wants to grant to each objective. In this case, the CCAA Judge, Mr. Justice Pinsonnault, decided that the fundamental objectives of maximizing creditor recovery and treating creditors equally should prevail.⁴ RQ subsequently raised before the QCA that the CCAA Judge had failed to exercise his discretion properly⁵. With respect to this argument, it was flatly rejected by the QCA.⁶ With respect to relative weight to be given to all objectives, this Court has already stated in the matter of *Callidus*⁷ (“**Callidus**”) that where a reorganization or a liquidation is complete and the Court is dealing with residual assets, the objective of maximizing creditor recovery from those assets may take center stage.⁸

In *Deloitte*, this Court further stated that one of the factors that could come into play while deciding if Pre-Post Set-Off should be authorized is public interest.⁹ However, in the same decision, this Court pointed out that the notion of public interest does not result in a public body being placed in a better position than other creditors of a debtor only because its claims relate to public funds.¹⁰ In light of the above, we believe that RQ Application is clearly ill-founded and respectfully submit that it does not meet the criteria for a leave to appeal to be granted.

Yours truly,

BLAKE, CASSELS & GRAYDON LLP



Bernard Boucher
/em

² *Deloitte*, at paragraph 20

³ *Deloitte* at paragraph 58

⁴ *First Instance Decision*, at paragraph 156

⁵ *QCA Decision*, at paragraph 42

⁶ *QCA Decision*, at paragraph 40

⁷ *9354-9186 Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#)

⁸ *Callidus*, para. 46

⁹ *Deloitte*, at paragraph 86

¹⁰ *Deloitte*, at paragraph 88