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February 28, 2023

**Supreme Court of Canada**  
301 WELLINGTON  
Ottawa, Ontario K1A 0J1

Attention: Mtre. Chantal Charbonneau, Registrar

**RE: *In the Matter of the Companies' Creditors Arrangements Act ("CCAA") of Bloom Lake General Partner Limited et al. ("CCAA Proceedings")***  
**Response by FTI Consulting Canada Inc. in its capacity as monitor ("Monitor") to the Application for Leave to Appeal by Agence du Revenu du Québec ("RQ")**  
**SCC Court File: 40625**

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Dear Mtre. Charbonneau,

This letter is sent on behalf of the Monitor 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 by the Quebec Court of Appeal ("**QCA**"), which affirmed the decision rendered on November 8, 2021 by Mr. Justice Michel A. Pinsonnault (the "**CCAA Supervising Judge**").

We respectfully submit that RQ has failed to raise any issue of public importance. The RQ Application is tellingly limited to barely ten paragraphs of the QCA's judgment, namely those dealing with the exercise of discretion by the CCAA Supervising Judge. The RQ Application does not point to any need to change the applicable and well-established three-part test recently reaffirmed by this Court in connection with the exercise of such discretion.<sup>1</sup> The RQ Application does not identify any contradiction between the QCA's decision and any other judgment previously rendered by a Canadian Court, nor does it articulate either in which way, if any, there is even a possibility that the principles set out by the QCA could create a precedent that is either unworkable in practice, or otherwise likely to have a problematic impact, especially in light of the dynamic nature of CCAA proceedings and the supervisory role of the courts vested with wide discretionary powers.

This Court recently confirmed that a high degree of deference is owed to CCAA supervising judges given their "*extensive knowledge and insight into the stakeholder dynamics and the business realities of the proceedings from their ongoing dealings with the parties.*"<sup>2</sup> Here, the CCAA Supervising

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<sup>1</sup> *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para 70; *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 at para 49 [**Callidus**]; *Montréal (City) v. Deloitte Restructuring Inc.*, 2021 SCC 53 at para 85 [**Deloitte**].

<sup>2</sup> *Callidus*, *supra* note 1 at para 47.

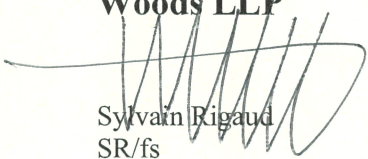
Judge specifically considered the opportunity to allow pre-post compensation in light of the CCAA's remedial objectives and concluded that there existed "...no valid reason in fact or at law to allow for pre/post set-off or compensation in this case."<sup>3</sup> The QCA confirmed that the CCAA Supervising Judge committed no error, much less a reviewable error, in refusing to exercise its discretion in this case in the manner sought by RQ.

The RQ Application focusses squarely on the CCAA Supervising Judge's exercise of discretion and raises a single issue already resolved in a dispositive manner by this Court. In *Deloitte*, the Court held that a supervising judge may use its discretion to allow pre-post compensation in rare and exceptional circumstances<sup>4</sup>, and always "in furtherance of the CCAA's remedial objectives."<sup>5</sup> Yet, while professing to adhere to the *Deloitte* ruling, RQ is attempting to contradict it by deviating from the paramount CCAA principles of equality amongst ordinary creditors and maximization of creditor recovery,<sup>6</sup> by seeking the creation of a priority which does not exist,<sup>7</sup> and by effectively attempting to allow pre-post compensation in its favour in all liquidating CCAA matters without evidence of any exceptional circumstances. In dismissing a similar argument in *Deloitte*, this Court indeed stated that "[t]he objective of protecting the public interest does not mean that public bodies should be placed in a better position than other creditors because their claims relate to public funds."<sup>8</sup> RQ's arguments are further in clear contradiction with the findings of *Callidus*, where the Court acknowledged that in liquidation CCAA matters, once the liquidation of assets is completed, the objective of maximizing creditor recovery may take center stage while the factual case specific assessment and balancing of applicable objectives remain within the discretion of the supervising judge.<sup>9</sup>

The present CCAA proceedings have been on-going for over eight years. The proposed appeal is the last outstanding issue before the Monitor may proceed with the final distribution to the creditors, which include a substantial number of former employees and retirees. Considering the foregoing, we respectfully submit that the RQ Application does not raise any issue that could warrant the intervention of the SCC. It should be dismissed with costs.

Yours truly,

**Woods LLP**

  
Sylvain Rigaud  
SR/fs

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<sup>3</sup> RQ Application, at page 36; *Arrangement relatif à Bloom Lake*, 2021 QCCS 4642 at para 152.

<sup>4</sup> *Deloitte supra* note 1 at paras 20 and 58.

<sup>5</sup> *Deloitte, supra* note 1 at para 58; *Callidus, supra* note 1 at para 49.

<sup>6</sup> *Callidus, supra* note 1 at para 46.

<sup>7</sup> *Deloitte, supra* note 1 at para 71.

<sup>8</sup> *Deloitte, supra* note 1 at para 88.

<sup>9</sup> *Callidus, supra* note 1 at para 46.