

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

File: No: 500-11-048114-157

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

**BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING
CORPORATION, 8568391 CANADA
LIMITED, CLIFFS QUÉBEC IRON
MINING ULC, WABUSH IRON CO.
LIMITED AND WABUSH RESOURCES
INC.**

Petitioners

- and -

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP, BLOOM LAKE
RAILWAY COMPANY LIMITED,
WABUSH MINES, ARNAUD RAILWAY
COMPANY AND WABUSH LAKE
RAILWAY COMPANY LIMITED**

Mises-en-cause

- and -

FTI CONSULTING CANADA INC.

Monitor

**THIRTY-SIXTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

INTRODUCTION

1. On January 27, 2015, Bloom Lake General Partner Limited (“**Bloom Lake GP**”), Quinto Mining Corporation (“**Quinto**”), 8568391 Canada Limited and Cliffs Québec Iron Mining ULC (“**CQIM**”) (collectively, the “**Bloom Lake Petitioners**”) sought and obtained an initial order (as amended, restated or rectified from time to time, the “**Bloom Lake Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) from the Superior Court of Québec (the “**Court**”), providing for, *inter alia*, a stay of proceedings against the Bloom Lake Petitioners until February 26, 2015, (the “**Bloom Lake Stay Period**”) and appointing FTI Consulting Canada Inc. as monitor (the “**Monitor**”). The relief granted in the Bloom Lake Initial Order was also extended to The Bloom Lake Iron Ore Mine Limited Partnership (“**Bloom Lake LP**”) and Bloom Lake Railway Company Limited (together with Bloom Lake LP, the “**Bloom Lake Mises-en-Cause**” and together with the Bloom Lake Petitioners, the “**Bloom Lake CCAA Parties**”). The proceedings commenced under the CCAA by the Bloom Lake CCAA Parties will be referred to herein as the “**CCAA Proceedings**”.

2. On May 20, 2015, the CCAA Proceedings were extended to include Wabush Iron Co. Limited (“**WICL**”), Wabush Resources Inc. (“**WRI**” and together with WICL, the “**Wabush Petitioners**”), Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively the “**Wabush Mises-en-Cause**” and together with the Wabush Petitioners, the “**Wabush CCAA Parties**”) pursuant to an initial order (as amended, restated or rectified from time to time, the “**Wabush Initial Order**”) providing for, *inter alia*, a stay of proceedings against the Wabush CCAA Parties until June 19, 2015, (the “**Wabush Stay Period**”) and approving an interim financing term sheet dated May 19, 2015 (as amended, the “**Interim Financing Term Sheet**”), providing an interim facility of up to US\$10 million (the “**Interim Financing**”). The Bloom Lake CCAA Parties and the Wabush CCAA Parties will be referred to collectively herein as the “**CCAA Parties**”.
3. The Bloom Lake Stay Period and the Wabush Stay Period (together, the “**Stay Period**”) have been extended from time to time and currently expires on June 30, 2017.
4. On April 17, 2015, Mr. Justice Hamilton J.S.C. granted an Order (the “**SISP Order**”) approving, as it relates to the Bloom Lake CCAA Parties, a sale and investor solicitation process (as may be amended from time to time, the “**SISP**”) involving the business and assets of the Bloom Lake CCAA Parties. The SISP was subsequently amended and restated to reflect the inclusion of the Wabush CCAA Parties in the CCAA Proceedings and was approved *nunc pro tunc* as it relates to the Wabush CCAA Parties pursuant to an Order granted June 9, 2015 (together with the April 17, 2015 Order, the “**SISP Order**”).
5. On June 22, 2015, Mr. Justice Hamilton J.S.C. granted an Order (the “**June 22 Rep Order**”) *inter alia*:

- (a) Appointing Michael Keeper, Terence Watt, Damin Lebel and Neil Johnson as representatives (the “**Representatives**”) of the Salaried Members (as defined in the June 22 Rep Order); and
 - (b) Appointing Koskie Minsky LLP and Nicholas Scheib (collectively “**Representative Counsel**”) as legal counsel to the Representatives.
6. On November 5, 2015, Mr. Justice Hamilton J.S.C. granted an Order approving a procedure for the submission, evaluation and adjudication of claims against the CCAA Parties and their current and former directors and officers (as amended, the “**Claims Procedure Order**”).
7. To date, the Monitor has filed thirty-five reports in respect of various aspects of the CCAA Proceedings. The purpose of this, the Monitor’s Thirty-Sixth Report (this “**Report**”), is to provide information to the Court with respect to:
- (a) The April 24 Forecast, as defined in the Monitor’s Thirty-Fourth Report;
 - (b) The CRA ITA Audit, as defined in the Monitor’s Thirty-Fourth Report;
 - (c) The reference of certain questions to the Supreme Court of Newfoundland and Labrador (Court of Appeal) (the “**Newfoundland COA**”) by the Lieutenant-Governor in Council for the Province of Newfoundland and Labrador pursuant to Orders in Council 2017-103 and 2017-137 (the “**Newfoundland Reference**”) and the Monitor’s activities and position with respect thereto;
 - (d) The current status of the Wabush Mine Sale Procedure, as defined in the Monitor’s Thirty-Second Report;

- (e) The CCAA Parties' motion (the "**Allocation Motion**") for an Order, *inter alia*:
 - (i) Approving the allocation methodology to be applied with respect to proceeds of realization and the costs of the CCAA Proceedings (the "**Allocation Methodology**");
 - (ii) Authorizing the repayment of the amount of approximately \$4.1 million in inter-company funding advanced by Bloom Lake LP to CQIM since the start of the CCAA Proceedings pursuant to the provisions of the Bloom Lake Initial Order; and
 - (iii) Authorizing the payment of certain amounts owing in respect of property taxes, claims for which are secured on the proceeds of realization of the applicable real property; and
- (f) Representative Counsel's motion (the "**Rep Counsel Fee and Scope Motion**") for an Order:
 - (i) Authorizing the payment by the Wabush CCAA Parties of the legal costs of the Salaried Members; and
 - (ii) Amending the June 22 Rep Order to include activities related to the Newfoundland Reference.

TERMS OF REFERENCE

8. In preparing this Report, the Monitor has relied upon unaudited financial information of the CCAA Parties, the CCAA Parties' books and records, certain financial information prepared by the CCAA Parties and discussions with various parties (the "**Information**").

9. Except as described in this Report:
 - (a) The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) The Monitor has not examined or reviewed financial forecasts and projections referred to in this Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
10. The Monitor has prepared this Report in connection with the Allocation Motion and the Rep Counsel Fee and Scope Motion, each returnable May 31, 2017. The Report should not be relied on for other purposes.
11. Future oriented financial information reported or relied on in preparing this Report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.
12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the Bloom Lake Initial Order, the Wabush Initial Order or previous reports of the Monitor.

EXECUTIVE SUMMARY

13. Capitalized terms used in the Executive Summary are as defined in the relevant section of the Report.
14. With respect to the Allocation Motion, the Monitor:

- (a) Is of the view that the proposed Allocation Methodology is appropriate, fair and reasonable in the circumstances and supports the CCAA Parties' request for approval of the proposed Allocation Methodology;
 - (b) Supports the CCAA Parties' request for authorization to repay the Bloom Lake Inter-Company Funding; and
 - (c) Supports the CCAA Parties' request for authorization to pay from the net proceeds of sale of real estate, after the application of the Allocation Methodology, outstanding property taxes that are not in dispute or otherwise contested, provided that there exists no competing claim which may rank equal or higher than such property taxes.
15. With respect to the Rep Fee and Scope Motion, the Monitor:
- (a) Has no objection to the cap on legal fees proposed in the Rep Counsel Fee and Scope Motion, noting that actual costs must be validly incurred in accordance with the June 22 Rep Order; and
 - (b) Has no objection to the proposed amendment of the June 22 Rep Order to include the Newfoundland Reference, though reserves the right to raise objections to the appropriateness and reasonableness of any fees incurred in respect of the Newfoundland Reference by Representative Counsel given the Monitor's position with respect to the Newfoundland Reference.

THE APRIL 24 FORECAST

16. Paragraph 18 of the Monitor's Thirty-Fourth Report stated:

“18. The Monitor has been assisting the CCAA Parties in the preparation of the April 24 Forecast. Completion of the April 24

Forecast has been delayed pending counsel to the CCAA Parties finalizing its forecast of legal costs for the period. The April 24 Forecast will be filed with the Court once it is completed.”

17. Since the date of the Monitor’s Thirty-Fourth Report, the Monitor has followed up several times regarding the forecast of legal costs for the period. Despite these efforts, the Monitor has not yet been provided a forecast of the CCAA Parties legal costs for its review and, accordingly, the April 24 Forecast has not yet been completed. Counsel to the CCAA Parties has informed the Monitor that the forecast of legal costs for the period will be provided by no later than May 31, 2017.

THE CRA ITA AUDIT

18. The CRA ITA Audit was discussed at paragraphs 40 to 42 of the Monitor’s Thirty-Fourth Report. Paragraph 42 of the Monitor’s Thirty-Fourth Report stated:

“42. On the call on April 20, 2017, the Monitor requested copies of the correspondence from CRA and of the responses provided to CRA. To date, those documents have not been provided to the Monitor.”

19. Counsel to the CCAA Parties subsequently confirmed that copies of the correspondence from CRA and of the responses provided to CRA would be provided but that redactions would, in their view, be necessary as the documents include information relating to non-CCAA Parties.
20. On May 25, 2017, counsel to the CCAA Parties provided redacted copies of the correspondence from CRA and the responses provided to CRA.

21. As the documents were only received on the eve of this Report, the Monitor has not yet reviewed the documents and, accordingly, is unable to provide any further update at this time or any comment on the potential implications of the CRA ITA Audit, if any, on the estates of the CCAA Parties.

THE NEWFOUNDLAND REFERENCE

22. The Newfoundland Reference refers the following questions to the Newfoundland COA (the “**Reference Questions**”), as set out in Order in Council 2017-013 issued on March 27, 2017:
- (a) The Supreme Court of Canada has confirmed in *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, that, subject only to the doctrine of paramountcy, provincial laws apply in proceedings under the *Companies’ Creditors Arrangement Act*, RSC 1985 c. C-36. What is the scope of section 32 of the *Pension Benefits Act, 1997, S.N.L. 1996, c. P-4.01* deemed trusts in respect of:
 - (i) Unpaid current service costs;
 - (ii) Unpaid special payments; and,
 - (iii) Unpaid wind-up liability?
 - (b) The Salaried Plan is registered in Newfoundland and regulated by the *Pension Benefits Act, 1997*.
 - (i) Does the *Pension Benefits Standards Act, R.S.C. 1985, c-32* deemed trust also apply to those members of the Salaried Plan who worked on the railway (i.e., a federal undertaking)?

- (ii) If yes, is there a conflict with the *Pension Benefits Act, 1997* and *Pension Benefits Standards Act*? If so, how is the conflict resolved?
 - (iii) Does the Quebec *Supplemental Pensions Plan Act, CQLR, c. R-15.1* also apply to those members of the Salaried Plan who reported for work in Quebec?
 - (iv) If yes, is there a conflict with the *Pension Benefits Act, 1997* and the Quebec *Supplemental Pensions Plan Act*? If so, how is the conflict resolved?
 - (v) Do the Quebec *Supplemental Pensions Plan Act* deemed trusts also apply to Quebec Salaried Plan members?
- (c) Is the *Pension Benefits Act, 1997* lien and charge in favour of the pension plan administrator in section 32(4) of the *Pension Benefits Act, 1997* a valid secured claim in favour of the plan administrator? If yes, what amounts does this secured claim encompass?
23. The Monitor has endeavoured to discuss with counsel to the Province the limitation of the Reference Questions to matters of statutory interpretation of section 32 of the *Pension Benefits Act, 1997, S.N.L. 1996, c. P-4.01* (the “**PBA**”) in the abstract without seeking to adjudicate matters that the CCAA Court has already determined will be dealt with in the CCAA Proceedings¹. Counsel to the Province declined to engage in any meaningful discussions in that regard.
24. On May 5, 2017, the Honourable Mr. Chief Justice Green of the Newfoundland COA granted an *ex parte* Order (the “**May 5 Reference Order**”), a copy of which is attached hereto as Appendix A, *inter alia*:

¹ The Order of the Honourable Mr. Justice Hamilton granted January 30, 2017 (the “**January 30 Jurisdiction Order**”), which has not been appealed, addressed various jurisdictional issues and other preliminary objections with respect to the Pension Priority Motion.

- (a) Inscribing the Newfoundland Reference for hearing;
 - (b) Providing for notice of the inscription of the Newfoundland Reference to various parties;
 - (c) Requiring Notices of Intention to Intervene to be filed by May 31, 2017;
 - (d) Providing for publication of newspaper notices by no later than May 26, 2017;
 - (e) Setting the timetable for the perfection of the Newfoundland Reference and disposition of other preliminary matters; and
 - (f) Setting a status hearing for June 9, 2017, to address various matters (the “**June 9 Hearing**”).
25. On May 9, 2017, counsel to the Monitor wrote to counsel to the Province (the “**May 9 Letter**”) to formally express its views on the Newfoundland Reference, including the view that the Reference Questions should be limited to the matters relating exclusively to the interpretation of section 32 of the PBA and that all other matters relating to the Wabush CCAA Parties or the Wabush CCAA Proceedings should be dealt with exclusively by the CCAA Court. A copy of the May 9 Letter, without schedules, is attached hereto as **Appendix B**.
26. On May 15, 2017, the Monitor filed a Notice of Intention to Intervene. Also on May 15, 2017, the Monitor filed an application with the Newfoundland COA (the “**Monitor’s Reference Application**”) for an order granting the following relief:
- (a) That, pursuant to Rule 31 (2) of the Civil Appeal Rules, the May 5 Reference Order be reheard by a panel of the Newfoundland COA; and

(b) That paragraph 5 of the May 5 Reference Order² be stayed until full argument can be heard with respect to the timing and scope of the Newfoundland Reference.

27. The Monitor's Reference Application, a copy of which is attached hereto as **Appendix C**, was returnable May 23, 2017. The Newfoundland COA declined to hear the Monitor's Reference Application on May 23, 2017, and it will now be addressed at the hearing scheduled for June 9, 2017.

STATUS OF POTENTIAL TRANSACTION FOR SALE OF WABUSH MINE

28. An update with respect to the potential sale of the Wabush Mine was last provided in the Monitor's Thirty-Fourth Report. In the Monitor's Thirty-Fourth Report, it was reported that the Wabush CCAA Parties, in consultation with the Monitor, were in the process of endeavouring to negotiate a mutually acceptable asset purchase agreement.

29. Since the date of the Monitor's Thirty-Fourth Report, the parties have made considerable progress with efforts to negotiate a mutually acceptable asset purchase agreement. While no agreement has been executed at the date of this Report and there is no certainty that an agreement will be executed, the Monitor is optimistic that an agreement will be executed in the near future. Further details of the current state of affairs with respect to the negotiation of a mutually acceptable asset purchase agreement are set out in **Confidential Appendix D**.

30. If an agreement of purchase and sale is executed, the Monitor will provide details of the agreement, any conditions precedent and its recommendation on the proposed transaction in connection with any motion for approval of such transaction by the CCAA Parties.

² Paragraph 5 of the May 5 Reference Order provides for the publication of newspaper notices.

THE ALLOCATION MOTION

BACKGROUND

31. As the Court is aware, various approval and vesting orders issued in the CCAA Proceedings specifically provide that the transactions were approved without prejudice to the rights of creditors to object to the allocation of proceeds. Accordingly, prior to any distribution to creditors it is necessary to obtain a final determination of the appropriate allocation of the proceeds of realizations among each of the CCAA Parties and amongst various asset classes.
32. As is common in CCAA proceedings involving groups of related companies, many of the costs incurred by the CCAA Parties during the CCAA Proceedings have been shared costs for the benefit of each of the CCAA Parties which would have been difficult, if not impossible, to specifically allocate.
33. As each of the CCAA Parties are separate legal entities with separate creditor constituencies³, it is necessary to provide for an appropriate, fair and reasonable allocation of costs in order to ensure that creditors of one CCAA Party are not prejudiced as compared to the creditors of other CCAA Parties. Accordingly, it is necessary for an appropriate allocation of the costs of the CCAA Proceedings among each of the CCAA Parties and amongst various asset classes to be determined.
34. As noted in its Thirty-First Report, the Monitor provided its recommendation for a proposed allocation methodology to the CCAA Parties and that recommendation was under consideration by the CCAA Parties.
35. The CCAA Parties have informed the Monitor that they have reviewed and considered the allocation methodology proposed by the Monitor and agree that it represents a fair and reasonable approach. Accordingly, the CCAA Parties have now filed the Allocation Motion seeking approval of the Allocation Methodology.

³ Other than Wabush Mines JV, which as an unincorporated joint venture, is not a legal entity.

THE ALLOCATION METHODOLOGY

36. The proposed allocation methodology was developed by the Monitor on a principled basis with a view to enabling proceeds of realization and the costs of the CCAA Proceedings to be allocated on a fair and reasonable basis consistent with the allocation methodology approved in other CCAA proceedings⁴. The Proposed Allocation Methodology is as follows:

- (a) Realizations from transactions would be allocated amongst specific assets and specific CCAA Parties as set out in each transaction agreement, which, in each case, are the allocations proposed by an arm's length purchaser;
- (b) Non-transaction related realizations specifically attributable to a CCAA Party would be allocated to that CCAA Party. For example cash on hand at the commencement of the CCAA Proceedings and collection of accounts receivable;
- (c) Non-transaction related realizations not specifically attributable to a CCAA Party would be allocated pro-rata based on total realizations. For example, interest on funds held by the Monitor;
- (d) Costs specifically attributable to an asset or asset category would be applied to that asset or category. For example, railcar storage fees would be applied against railcar proceeds;
- (e) Costs specifically attributable to a CCAA Party would be allocated to that CCAA Party. For example, Bloom Lake mine and Wabush Mine direct operating costs would be allocated to BLLP and to Wabush Mine JV respectively;

⁴ Including the CCAA proceedings of Timminco Limited and Bécancour Silicon Inc.

- (f) Costs not specifically attributable to a CCAA Party would be allocated pro-rata based on net realizations after specifically attributable costs. For example, costs of management and legal and professional costs. Within this category, legal and professional fees billed on the Bloom Lake accounts will be allocated amongst the Bloom Lake CCAA Parties, legal and professional fees billed on the Wabush accounts will be allocated amongst the Wabush CCAA Parties and legal and professional fees billed on the joint Bloom/Wabush accounts will be allocated amongst all of the CCAA Parties; and
 - (g) As the Wabush Mines joint venture is not a legal entity, it does not have assets and liabilities in its own right. Accordingly any realizations and costs notionally allocated to Wabush Mines in the foregoing steps would be allocated to the joint venturers, WICL and WRI, based on their respective joint venture interests.
37. The Monitor has not included details of the calculation of the effect of the application of the proposed Allocation Methodology in this Report as the Monitor is of the view that the Allocation Methodology should be considered on a principled basis, without reference to the result for any specific creditor. The Monitor does note however, that the estimates of the potential range of distributions to unsecured creditors of each of the CCAA Parties provided at paragraph 69 of the Monitor's Thirty-Fourth Report were calculated applying the proposed Allocation Methodology.
38. The Monitor is of the view that the proposed Allocation Methodology is appropriate, fair and reasonable in the circumstances and supports the CCAA Parties' request for approval of the proposed Allocation Methodology.

REPAYMENT OF INTER-COMPANY FUNDING

39. As previously reported in several of the Monitor's reports, most recently in the Monitor's Thirty-Fourth Report, the amount of approximately \$4.1 million in inter-company funding has been advanced by Bloom Lake LP to CQIM since the start of the CCAA Proceedings pursuant to the provisions of the Bloom Lake Initial Order (the "**Bloom Lake Inter-Company Funding**").
40. The provisions of the various approval and vesting orders granted in respect of sales that have generated sale proceeds require that such proceeds be held by the Monitor pending further Order of the Court. Accordingly, an Order of the Court is required to allow the repayment of the Bloom Lake Inter-Company Funding.
41. If the Allocation Methodology is approved, CQIM will have sufficient funds to repay the Bloom Lake Inter-Company Funding. Failure to repay the Bloom Lake Inter-Company Funding would be detrimental to the interests of the creditors of Bloom Lake LP and would provide a wind-fall benefit to the creditors of CQIM.
42. Accordingly, the Monitor supports the CCAA Parties' request for authorization to repay the Bloom Lake Inter-Company Funding.

DISBURSEMENT OF PROCEEDS TO PAY PROPERTY TAXES

43. As the Court is aware, pre- and post-filing amounts are outstanding in respect of property taxes accruing to the closing date of various transactions involving the sale of real estate. Those amounts have statutory priority on the proceeds of the realization of the real estate to which they relate, subject to any valid deemed trust in respect of the Pension Claims.

44. The provisions of the various approval and vesting orders granted in respect of sales that have generated sale proceeds require that such proceeds be held by the Monitor pending further Order of the Court. Accordingly, an Order of the Court is required to allow disbursement of sale proceeds on account of priority property tax claims. The CCAA Parties now seek an Order authorizing the payment from the net proceeds of sale of real estate, after the application of the Allocation Methodology, of outstanding property taxes that are not in dispute or otherwise contested, provided that there exists no competing claim which may rank equal or higher than such property taxes⁵.
45. Various claims for property taxes have been made by the Ville de Fermont and the Ville de Sept Iles. Those claims include both pre- and post-filing amounts, amounts relating periods subsequent to the closing of the sale of the real estate which have been assumed by the relevant purchaser, interest and amounts subject to contestation or appeal as discussed in earlier reports of the Monitor. In addition, if the contestations and appeals are successful, refunds may be owing to the CCAA Parties, creating a potential amount that may be set-off against the amounts owing. The aggregate amounts of the claims as currently understood by the Monitor are summarized as follows:

	Ville de Fermont		Ville de Sept Iles			
	Bloom Lake GP	Bloom Lake LP	CQIM	WRI	Wabush Mines	Arnaud
	\$000	\$000	\$000	\$000	\$000	\$000
Principal	24,144.7	24,693.5	4,787.6	4,557.5	26.7	600.8
Interest	2,270.0	2,317.2	252.2	226.1	1.4	31.5
Disputed amounts	(23,325.8)	(23,635.8)	(2,111.1)	(5,594.6)	(15.4)	(269.8)
Undisputed Amount	3,088.9	3,374.9	2,928.7	(811.0)	12.7	362.5

⁵ For greater certainty, including any potential deemed trust claims in respect of the Pension Plans.

46. In addition to the amounts set out above, approximately \$124,000 is claimed as owing by the Town of Wabush in respect of property taxes related to properties in the Town of Wabush.
47. The claims of Ville de Sept Iles and the Town of Wabush against WRI, WICL, Wabush Mines and Arnaud Railway Company are subject to potential priority claims in respect of the Pension Plans. Accordingly, no amounts would be paid on account of such claims until the Pension Priority Motion has been finally determined.
48. If the Allocation Methodology is approved and the request for authorization to make payments in respect of undisputed property tax claims is granted, it is anticipated that net proceeds from the sale of real estate, after allocation of costs, would be available to make payments to Ville de Fermont and Ville de Sept Iles in respect of their claims against Bloom Lake LP and CQIM respectively. No amount would be paid on account of the claim of Ville de Fermont against Bloom Lake GP as there are no proceeds of sale of real estate in Bloom Lake GP.
49. The specific amount of such payments can only be calculated once the Allocation Methodology has been approved and up to date billing information has been obtained in respect of the costs of the CCAA Proceedings. Accordingly, it is not possible at this time to calculate the specific amounts that would be available for payment. However, based on current estimates, the Monitor expects that if the Allocation Motion is granted, there would be sufficient net proceeds after application of the Allocation Methodology to pay the undisputed amount of the claim of Ville de Fermont against Bloom Lake LP in part and to pay the undisputed amount of the claim of Ville de Sept Iles against CQIM in full.

50. The Monitor supports the CCAA Parties' request for authorization to pay from the net proceeds of sale of real estate, after the application of the Allocation Methodology, outstanding property taxes that are not in dispute or otherwise contested, provided that there exists no competing claim which may rank equal or higher than such property taxes. Any payment would be made first on account of the principal amount of any pre-closing post-filing amount owing, secondly on account of the principal amount of any pre-filing amount owing and thirdly on account of any interest validly accrued on the secured claims.

REP COUNSEL FEE AND SCOPE MOTION

51. Payment of legal costs of Rep Counsel was last approved by the Court in an Order granted October 28, 2016 (the "**October 28 Rep Fee Order**"). The October 28 Rep Fee Order provided for payment by the Wabush CCAA Parties of the legal fees, taxes and disbursements of Representative Counsel for the period October 1, 2016, to January 31, 2017, up to an amount of \$35,000 per month in legal fees subject to a total cap for such legal fees of \$140,000.
52. The Rep Counsel Fee and Scope Motion seeks an Order:
- (a) Authorizing the payment by the Wabush CCAA Parties of the legal fees of the Salaried Members for the period to January 31, 2017, that were in excess of the cap on such fees in the October 28 Rep Fee Order;
 - (b) Authorizing the payment by the Wabush CCAA Parties of the legal costs of the Salaried Members for the period February 1 to June 30, 2017, up to an amount of \$40,000 per month in legal fees subject to a total cap for such legal fees of \$200,000; and
 - (c) Amending the June 22 Rep Order to include activities related to the Newfoundland Reference.

53. Legal fees of Representative Counsel for the period October 1, 2016, to January 31, 2017, were \$154,165.00, \$14,165.00 in excess of the total cap provided for in the October 28 Rep Fee Order.
54. Representative Counsel has informed the Monitor that legal fees incurred in the period February 1 to April 30, 2017, total \$41,853.50, leaving a balance of \$158,146.50 against the proposed overall cap on legal fees for the period.
55. Paragraphs 5 and 6 of the June 22 Rep Order state:

5. GRANTS the motion of the Petitioners-Mises-en-cause (the "Representatives") appointing them as representatives of all salaried/non-Union employees and retirees of the Wabush CCAA Parties (namely, Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway company and Wabush Lake Railway Company Limited) or any person claiming an interest under or on behalf of such employees or former employees or pensioners and surviving spouses, or group or class of them (excluding Opt-Out Individuals, as defined below, if any), (collectively, the "Salaried Members"), in these CCAA proceedings, for the purpose of representing the Salaried Members in these CCAA proceedings and in particular with respect to proving, settling or compromising the rights and claims of the Salaried Members in these CCAA proceedings, who shall be bound by the actions of the Representatives and Representative Counsel (as defined below) in these CCAA proceedings;

6. GRANTS the appointment of Koskie Minsky LLP and Nicholas Scheib (collectively, "Representative Counsel") as legal counsel to the Representatives in their capacity as representatives for the Salaried Members in these CCAA proceedings with the mandate to provide assistance to the Salaried Members so that the Salaried

Members are able to participate in the CCAA proceedings and the restructuring process in a more efficient manner, including to assist the Salaried Members in the evaluation of their entitlements and claims in a cost-effective and timely manner;”

56. As discussed earlier in this Report, the Monitor takes that position that the Newfoundland Reference should be limited to matters of statutory interpretation in the abstract, that the Reference Questions should not be specific to the Wabush CCAA Proceedings or the Wabush Pension Plans, and that all matters relevant to the Pension Priority Motion can, and should, be dealt with by the Court in the CCAA Proceedings. The Monitor is of the view that this position is consistent with the January 30 Jurisdiction Order.
57. In the Monitor’s view, it is not clear that any costs incurred or to be incurred by Representative Counsel in connection with the Newfoundland Reference fall within the parameters of the June 22 Rep Order and arguably do not do so. Accordingly, the Rep Counsel Fee and Scope Motion seeks to amend the June 22 Rep Order to specifically include costs incurred in respect of the Newfoundland Reference.
58. The Monitor requested that Representative Counsel provide a break-down between the major areas of activity in the CCAA Proceedings of the estimated legal fees for the period February 1 to June 30, 2017, on which the proposed cap was based. The break-down provided by Representative Counsel included \$25,000 related to the Newfoundland Reference. Invoices have not been received from Representative Counsel for February, March or April 2017 and additional time related to the Newfoundland Reference could be included in those invoices.
59. The Monitor understands that the CCAA Parties take no position with respect to the Rep Counsel Fee and Scope Motion.

60. The Monitor continues to be of the view that the involvement of Representative Counsel is beneficial. The Monitor has no objection to the cap on legal fees proposed in the Rep Counsel Fee and Scope Motion, noting that actual costs must be validly incurred in accordance with the June 22 Rep Order.
61. With respect to payment of fees of Representative Counsel related to the Newfoundland Reference, the Monitor comments as follows:
 - (a) Given the participation of Representative Counsel, the Province of Newfoundland and the regulators of the Wabush Pension Plans in the hearing that resulted in the January 30 Jurisdiction Order, and the fact that the January 30 Jurisdiction Order was not appealed, it is not clear that any fees incurred to date by Representative Counsel related to the Newfoundland Reference were necessary or fall within the scope of the June 22 Rep Order;
 - (b) Given the scope of the May 5 Reference Order, the refusal of the Province to limit the scope of the Reference Questions and the refusal of the Newfoundland COA to hear the Monitor's application prior to the June 9 Hearing, the Monitor understands the desire of Representative Counsel to participate in the June 9 Hearing; and
 - (c) The reasonableness and appropriateness of Representative Counsel participating in the Newfoundland Reference will need to be determined following the June 9 Hearing and the hearing of the Pension Priority Motion scheduled to be heard June 28 and 29, 2017.
62. The Monitor has no objection to the proposed amendment of the June 22 Rep Order to include the Newfoundland Reference, though reserves the right to raise objections to the appropriateness and reasonableness of any fees incurred in respect of the Newfoundland Reference by Representative Counsel given the Monitor's position with respect to the Newfoundland Reference.

The Monitor respectfully submits to the Court this, its Thirty-Sixth Report.

Dated this 26th day of May, 2017.

FTI Consulting Canada Inc.

In its capacity as Monitor of

Bloom Lake General Partner Limited, Quinto Mining Corporation,

8568391 Canada Limited, Cliffs Québec Iron Mining ULC,

Wabush Iron Co. Limited, Wabush Resources Inc.,

The Bloom Lake Iron Ore Mine Limited Partnership,

Bloom Lake Railway Company Limited, Wabush Mines,

Arnaud Railway Company and Wabush Lake Railway Company Limited



Nigel D. Meakin
Senior Managing Director



Steven Bissell
Managing Director

Appendix A

The May 5 Reference Order

File No. 2017 01H 0029

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL

IN THE MATTER OF Section 13 of Part
I of the *Judicature Act*, RSNL 1990, c. J-4

AND

IN THE MATTER OF Section 32 of the
Pension Benefits Act, 1997, SNL 1996, c.
P-4.01

AND

IN THE MATTER OF a Reference of
The Lieutenant-Governor in Council to the
Court of Appeal for its hearing,
consideration and opinion on the
interpretation of the scope of s. 32 of the
Pension Benefits Act, 1997

ORDER

BEFORE: Green C.J.N.L.

WHEREAS the Attorney General of Newfoundland and Labrador has applied for an order that
the Reference be inscribed for hearing and for an order for directions;

AND UPON HEARING Rolf Pritchard Q.C. and Philip Osborne on behalf of the Attorney
General;

IT IS ORDERED AND DIRECTED THAT:

1. The Reference be inscribed for hearing;
2. The Attorney General shall give notice of the inscription of the Reference and of this
Order, in the attached form marked "A", to:

Filed	May 5/17	JB
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- (a) **The Attorney General of Canada;**
- (b) **The attorneys-general of each other province and territory of Canada;**
- (c) **FTI Consulting Canada Inc. (the “Monitor” in the Québec Proceeding);**
- (d) **Those persons named as petitioners in a proceeding in the Québec Superior Court (Commercial Division) identified as File No. 500-11-048114-157 (the “Québec Proceeding”), namely:**
 - (i) **Bloom Lake General Partner Limited;**
 - (ii) **Quinto Mining Corporation;**
 - (iii) **8568391 Canada Limited;**
 - (iv) **Cliffs Quebec Iron Mining ULC;**
 - (v) **Wabush Iron Co. Limited; and**
 - (vi) **Wabush Resources Inc.;****(collectively, the “Petitioners”);**
- (e) **Those persons representing non-unionized pensioners in the Québec Proceeding, namely, Michael Keeper, Terence Watt, Damien LeBel and Neil Johnson (the “Non-unionized Pensioners”);**
- (f) **The bodies representing unionized pensioners in the Québec Proceeding, namely, Syndicat des Métallos, Sections Locales 6254 et 6285 (the “Unionized Pensioners”);**
- (g) **Morneau Shepell Ltd., in its capacity as Replacement Plan Administrator, as named in the Québec Proceeding (the “Replacement Plan Administrator”);**
- (h) **Her Majesty in Right of Newfoundland, as represented by the Superintendent of Pensions (the “NL Superintendent”);**



- (i) **The Attorney General of Canada, acting on behalf of the Office of the Superintendent of Financial Institutions, as named in the Québec Proceeding (the “Canadian Superintendent”);**
 - (j) **Régime de rentes du Québec, as named in the Québec Proceeding (the “Québec Regulator”); and**
 - (k) **Ville de Sept-Îles (the “Town”).**
3. **The persons notified in paragraph 2 of this Order shall on or before May 31, 2017 file a Notice of Intention to Intervene with the Registry of the Court if they wish to intervene and be heard, either orally or in writing, in the Reference. Thereafter, such persons who file a Notice shall, unless otherwise ordered by the Court, have the right to be heard in the Reference.**
4. **Any other persons claiming to be interested parties to the Reference and wishing to intervene and be heard, either orally or in writing, shall on or before May 31, 2017 apply to the Court for leave to intervene, with the application returnable on June 9, 2017.**
5. **The Attorney General shall cause a notice, in the attached form marked “B”, to be published on at least two occasions before May 26, 2017 in each of the newspapers listed in the attached schedule marked “C” and provide proof of publication by filing an affidavit in the Court.**
6. **Every other party on the service list in the Québec Proceeding, attached as schedule “D”, who was not previously listed in paragraph 2 of this Order (collectively, the “Other Parties”), shall be given the notice published in the newspapers under paragraph 5 and they may apply for leave to intervene in the Reference under paragraph 4.**



7. The Attorney General of Newfoundland and Labrador, the Attorney General of Canada the other Attorneys General and any person who has given Notice of Intention to Intervene under paragraph 3 or has applied to intervene and been granted intervenor status under paragraph 4 may be at liberty to adduce evidence on the Reference by the filing of materials, subject to further direction and order of the Court.
8. The timetable for the perfection of the Reference and the disposition of other preliminary matters shall, subject to further direction, amplification or modification by the Court, be as set forth in the attached schedule marked "E".
9. A status hearing shall be held on June 9, 2017 at 10:00 A.M. to address, amongst other things:
 - (a) Applications to intervene under paragraph 4 of this order;
 - (b) Whether any group of intervenors may be able to be treated as a class for the purpose of appointing a representative under section 19 of the *Judicature Act*;
 - (c) The nature of any evidence to be filed on the Reference and the manner and timing of its presentation;
 - (d) Any adjustments to the timetable for perfection of the Reference;
 - (e) The setting of dates and times for dealing with any other preliminary applications;
and
 - (f) The giving of any further directions or making of such further orders as may be necessary or desirable to advance the hearing of the Reference.
10. The Attorney General of Newfoundland and Labrador, the Attorney General of Canada and any other person who has given Notice of Intention to Intervene under paragraph 3 or who has applied to intervene and been granted intervenor status under paragraph 4 have



leave to apply for further directions and orders as may be appropriate and as their interests may appear.

DATED at St. John's, NL this 5th day of May 2017.

V Bishop

**COURT
OFFICER**

JTB

Schedule A ^{JAS}

NOTICE

Be advised that

- 1 The Lieutenant-Governor in Council for the Province of Newfoundland and Labrador has referred several questions (the Reference) to the Supreme Court of Newfoundland and Labrador, Court of Appeal (the NLCA) by Orders in Council 2017-103 and 2017-137. These Orders in Council are attached as Appendix 1.
- 2 Chief Justice Green ordered on April 27, 2017 that you be notified of the Reference and given an opportunity to apply to intervene. The order is attached as Appendix 2.
- 3 If you wish to intervene in the Reference and be heard, orally or in writing, you must file a Notice of Intention to Intervene in the NLCA Registry by **May 31, 2017**.
- 4 If you file a Notice of Intention to Intervene, you have the right to appear at and participate at a status hearing scheduled to be held on **June 9, 2017**.
- 5 The contact information for the NLCA is

Supreme Court of Newfoundland and Labrador
Court of Appeal
287 Duckworth Street, P.O. Box 937
St. John's, NL A1C 5M3
COAregistry@supreme.court.nl.ca (709) 729-0066

Schedule B *AS*

NOTICE

Be advised that by Orders in Council 2017-103 and 2017-137 the Lieutenant-Governor in Council for the Province of Newfoundland and Labrador has, pursuant to the *Judicature Act*, RSNL 1990, c. J-4 (the "Act"), referred to the Supreme Court of Newfoundland and Labrador, Court of Appeal (the "NLCA") the following questions:

1. The Supreme Court of Canada has confirmed in *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, that, subject only to the doctrine of paramountcy, provincial laws apply in proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985 c. C-36. What is the scope of section 32 of the *Pension Benefits Act, 1997*, SNL 1996 cP-4.01 deemed trusts in respect of:
 - a) unpaid current service costs;
 - b) unpaid special payments; and
 - c) unpaid wind-up deficits?

2. The Salaried Plan is registered in Newfoundland and Labrador and regulated by the *Pension Benefits Act, 1997*.
 - a)
 - (i) Does the federal *Pension Benefits Standards Act*, RSC 1985, c-32 deemed trust also apply to those members of the Salaried Plan who worked on the railway (i.e., a federal undertaking)?
 - (ii) If yes, is there a conflict with the *Pension Benefits Act, 1997* and *Pension Benefits Standards Act*? If so, how is the conflict resolved?
 - b)
 - (i) Does the Quebec *Supplemental Pension Plans Act*, CQLR, c. R-15.1 also apply to those members of the Salaried Plan who reported for work in Quebec?
 - (ii) If yes, is there a conflict with the *Pension Benefits Act, 1997* and the Quebec *Supplement Pension Plans Act*. If so, how is the conflict resolved?
 - (iii) Do the Quebec *Supplemental Pension Plans Act* deemed trusts also apply to Quebec Salaried Plan members?

3. Is the *Pension Benefits Act, 1997* lien and charge in favour of the pension plan administrator in section 32(4) of the *Pension Benefits Act, 1997* a valid secured claim in favour of the plan administrator? If yes, what amounts does this secured claim encompass? (The reference as a whole being hereinafter referred to as the "Reference")

Pursuant to the Order of Chief Justice Green dated April 27, 2017, the Reference has been inscribed and the following procedure, unless amended by further Order or direction of the NLCA, shall govern the Reference:

1. All persons claiming to be interested parties to the Reference and wishing to intervene and be heard, either orally or in writing, shall on or before May 31, 2017



- apply to the NLCA for leave to intervene, with the application returnable on June 9, 2017.
2. A status hearing shall be held at the NLCA on June 9, 2017 at 10:00 A.M. to address, amongst other things:
 - a) applications to intervene referenced at item 1 above;
 - b) whether any group of intervenors may be able to be treated as a class for the purpose of appointing a representative under section 19 of the Act;
 - c) the nature of any evidence to be filed on the Reference and the manner and timing of its presentation;
 - d) any adjustments to the timetable for perfection of the Reference;
 - e) the setting of dates and times for dealing with any other preliminary applications; and
 - f) the giving of any further directions or making of such further orders as may be necessary or desirable to advance the hearing of the Reference.

 3. The schedule for filing documents and the hearing of the Reference is, subject to future modifications, as follows:
 - a) the Attorney General of Newfoundland and Labrador ("AGNL") to file his factum no later than July 26, 2017;
 - b) the Attorney General of Canada, any other Attorney Generals and any intervenors to file their factums no later than August 23, 2017;
 - c) the AGNL to file his reply factum, if necessary, no later than September 8, 2017; and
 - d) the Reference to be heard on September 20 and 22, 2017.

The contact information for the NLCA is:

Supreme Court of Newfoundland and Labrador
Court of Appeal
287 Duckworth Street, P.O. Box 937
St. John's, NL A1C 5M3
COAregistry@supreme.court.nl.ca (709) 729-0066

Schedule C *AB*

The Attorney General shall cause a notice to be published on at least two occasions before May 26, 2017 in each of the newspapers listed below:



1. *The Globe and Mail*
2. *The Telegram* (St. John's)
3. *The Western Star* (Corner Brook)
4. *The Aurora* (Labrador West)
5. *Le Nord Côtier* (Sept-Îles)
6. *Le Trait d'union du Nord* (Fermont)

Schedule D *JAS*

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)

(Sitting as a court designated pursuant to the *Companies'
Creditors Arrangement Act*, R.S.C., c. 36, as amended)

N°: 500-11-048114-157

IN THE MATTER OF THE PLAN OF COMPROMISE OR
ARRANGEMENT OF:

BLOOM LAKE GENERAL PARTNER LIMITED,
QUINTO MINING CORPORATION,
8568391 CANADA LIMITED,
CLIFFS QUEBEC IRON MINING ULC,
WABUSH IRON CO. LIMITED
AND
WABUSH RESOURCES INC.

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP,
BLOOM LAKE RAILWAY COMPANY LIMITED,
WABUSH MINES,
ARNAUD RAILWAY COMPANY
AND
WABUSH LAKE RAILWAY COMPANY, LIMITED

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

SERVICE LIST
(UPDATED AS OF APRIL 18, 2017)

<p><i>Counsel for the Petitioners</i> <i>Blake, Cassels & Graydon LLP</i> 1 Place Ville Marie, Suite 3000 Montréal, Québec H3B 4N8</p> <p>Attention: Bernard Boucher (Montréal) Sébastien Guy (Montréal) Steven Weisz (Toronto) Milly Chow (Toronto) Aryo Shalviri (Toronto)</p> <p>Email: bernard.boucher@blakes.com sebastien.guy@blakes.com steven.weisz@blakes.com milly.chow@blakes.com aryo.shalviri@blakes.com</p>	<p><i>The Monitor</i> <i>FTI Consulting Canada Inc.</i> TD Waterhouse Tower 79 Wellington Street West Suite 2010, P.O. Box 104 Toronto, ON M5K 1G8</p> <p>Attention : Nigel Meakin Email : nigel.meakin@fticonsulting.com</p> <p>Attention: Steven W. Bissell Email: steven.bissell@fticonsulting.com</p> <p>Attention: Michael Basso Email: michael.basso@fticonsulting.com</p> <p>Attention: Ellen Dong Email: ellen.dong@fticonsulting.com</p>
<p><i>Counsel for the Monitor</i> <i>Norton RoseFulbright LLP</i> Suite 2500, 1 Place Ville Marie Montréal, QC H3B 1R1</p> <p>Attention : Sylvain Rigaud (Montréal) Chrystal Ashby (Montréal) Andre Anne Fortin (Montréal) Tony Reyes (Montréal) Evan Cobb (Toronto)</p> <p>Email : sylvain.rigaud@nortonrosefulbright.com chrystal.ashby@nortonrosefulbright.com evan.cobb@nortonrosefulbright.com AndreAnne.Fortin@nortonrosefulbright.com Tony.Reyes@nortonrosefulbright.com</p>	<p><i>Independent Counsel for the Board of Directors of the Petitioners</i> <i>Lax O'Sullivan Scott Lisus LLP</i> 145 King Street West, Suite 2750 Toronto, ON M5H 1J8</p> <p>Attention: Andrew Winton Email: awinton@counsel-toronto.com</p> <p>Attention: Matthew Gottlieb Email: mgottlieb@counsel-toronto.com</p>

<p>Counsel for Cliffs Mining Company</p> <p><i>Thomton Grout Finnigan LLP,</i> Suite 3200, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, ON M5K 1K7</p> <p>Attention: Grant B. Moffat Email: gmoffat@tgf.ca</p> <p><i>Dentons</i> 1 Place Ville Marie 39th Floor, Montréal Quebec H3B 4M7</p> <p>Attention: Roger Simard Louis Dumont</p> <p>Email: roger.simard@dentons.com louis.dumont@dentons.com</p> <p><i>Hicks Morley</i> 77 King Street West, 39th Floor Box 371, TD Centre Toronto, ON M5K 1K8</p> <p>Attention: Elizabeth M Brown John Prezioso</p> <p>Email: elizabeth-brown@hicksmorley.com john-prezioso@hicksmorley.com</p>	
<p>3858031 Canada Inc. <i>(ASSI)</i></p> <p><i>Besnier Dion Rondeau S.E.N.C. Avocats</i> 865, Boul. Laure, Sept-Îles (Québec) G4R 1Y6</p> <p>Attention : Hubert Besnier Email : hbesnier.bdr@cqocable.ca</p>	<p>3887952 Canada Inc. <i>(Équipements Nordiques)</i></p> <p><i>Besnier Dion Rondeau S.E.N.C. Avocats</i> 865, Boul. Laure, Sept-Îles (Québec) G4R 1Y6</p> <p>Attention : Luc Dion Email : besnier.avocats@cqocable.ca</p>
<p>8901341 Canada Inc. <i>Canadian Development and Marketing Corporation</i></p> <p><i>Osler, Hoskin & Harcourt LLP</i> 1000 De La Gauchetière Street West, Suite 2100, Montréal QC H3B 4W5</p> <p>Attention: Julien Morissette Email: jmorissette@osler.com</p>	<p>Administration Portuaire de Sept-îles</p> <p><i>Fasken Martineau</i> PO Box 242, The Stock Exchange Tower 800 Victoria Place, Suite 3700 Montréal, QC H4Z 1E9</p> <p>Attention: Luc Morin Guillaume-Pierre Michaud</p> <p>Email: lmorin@fasken.com gmichaud@fasken.com</p>

<p>AIA Automation Inc. <i>Besnier Dion Rondeau S.E.N.C. Avocats</i> 865, Boul. Laure, Sept-Îles (Québec) G4R 1Y6 Attention : Luc Dion Email : besnier.avocats@cgocable.ca</p>	<p>Air Inuit Ltd. <i>Langlois, avocats sncrl</i> 1250, boul. René-Lévesque Ouest Montréal Qc H3B 4W8 Attention: Gerry Apostolatos Daniel Baum Email: gerry.apostolatos@langlois.ca daniel.baum@langlois.ca</p>
<p>Attorney General of Canada Department of Justice – Canada Surintendant des Institutions Financières Guy-Favreau Complex 200 René-Lévesque Blvd. West, 9th Floor Montréal, Québec H2Z 1X4 Attention: Pierre Lecavalier Email: pierre.lecavalier@justice.qc.ca</p>	<p>Axor Experts-Consell Inc. <i>Besnier Dion Rondeau S.E.N.C. Avocats</i> 865, Boul. Laure, Sept-Îles (Québec) G4R 1Y6 Attention : Luc Dion Email : besnier.avocats@cgocable.ca</p>
<p>Bank of America <i>Osler, Hoskin & Harcourt LLP</i> 1000 De La Gauchetière Street West, Suite 2100 Montréal QC H3B 4W5 Attention: Martin Desrosiers Email: mdesrosiers@osler.com</p>	<p>BBA Inc. <i>Lavery, De Billy S.E.N.C.R.L.</i> 1, Place Ville-Marie, bureau 4000 Montréal, Québec H3B 4M4 Attention : Jean-Yves Simard Despina Mandilaras Email : jysimard@lavery.ca dmandilaras@lavery.ca</p>
<p>Béton Provincial Ltée 8090, rue Boyer Casier postal 87041 Québec, Québec G1G 5E1 Attention: Annie Guérette Email: a.guerette@betonprovincial.com</p>	<p>Beumer Corporation <i>Fasken Martineau</i> PO Box 242, The Stock Exchange Tower 800 Victoria Place, Suite 3700 Montréal, QC H4Z 1E9 Attention: Annie Bernard Brandon Farber Email: abernard@fasken.com bfarber@fasken.com</p>

<p>Bremo Inc (a.k.a. Rematech Division Bremo) Bouchard Pagé Tremblay Avocats 825, boul. Lebourgneuf, bureau 510 Québec, Québec G2J 0B9</p> <p>Attention : Katherine Boulianne Email : katherineboulianne@bptavocats.com</p>	<p>Canadian Iron Ore Railcar Leasing LP McMillan LLP Brookfield Place, Suite 4400 181 Bay Street, Toronto, Ontario M5J 2T3</p> <p>Attention : Wael Rostom Michael J. Hanlon and Emile Catimel-Marchand</p> <p>Email: wael.rostom@mcmillan.ca; michael.hanlon@mcmillan.ca Emile.Catimel-Marchand@mcmillan.ca</p>
<p>Canadian Transportation Agency 15 Eddy Street Gatineau, Quebec J8X 4B3</p> <p>Attention : Allan Matte Email: Allan.Matte@otc-cla.gc.ca</p>	<p>Caterpillar Financial Services Limited Miller Thomson SENCRL / LLP 1000, rue De La Gauchetière Ouest, Suite 3700 Montréal (Québec) H3B 4W5</p> <p>Attention : Michel La Roche Email : mlaroche@millerthomson.com</p>
<p>CIT Financial Ltd. Miller Thomson SENCRL / LLP 1000, rue De La Gauchetière Ouest, Suite 3700 Montréal (Québec) H3B 4W5</p> <p>Attention : Jean-François Gauvin Email : jfgauvin@millerthomson.com</p>	<p>City of Fermont Cain Lamarre Casgrain Wells S.E.N.C.R.L. 255, rue Racine Est, bureau 600, case postale 5420 Chicoutimi (Québec) G7H 6J6</p> <p>Attention : François Bouchard Jean-François Delisle</p> <p>Email : francois.bouchard@clcw.qc.ca; jean.francois.delisle@clcw.ca</p>
<p>Concassés de la Rive-Sud Inc. and Hatch Ltée McCarthy Tétrault S.E.N.C.R.L., s.r.l. Bureau 2500 1000, rue De La Gauchetière Ouest Montréal QC H3B 0A2</p> <p>Attention : Gabriel Querry Miguel Bourbonnais</p> <p>Email : gquerry@mccarthy.ca mbourbonnais@mccarthy.ca</p>	<p>Construction Fortin & Lévesque Inc. BCF s.e.n.c.r.l. / LLP 1100, boulevard René-Lévesque Ouest, 25e étage, Montréal (Québec) H3B 5C9 CANADA</p> <p>Attention : Bertrand Giroux Email : bertrand.giroux@bcf.ca</p>

<p>Construction L.F.G. Inc. Avocats BSL Inc. 160 rue de l'Évêché West, Suite 202 Rimouski, QC G5L 4H9 Attention: Chantal Gagnon Guyllaume Amiot Email: cgagnon@avocatsbsl.com gamiot@avocatsbsl.com</p>	<p>CSL Group Inc. Davies Ward Phillips & Vineberg LLP 155 Wellington Street West Toronto, ON M5V 3J7 Attention: Robin Schwill Email: rschwill@dwpv.com With a copy to: Julie Lambert, Assistant General Counsel Email: julie.lambert@csiships.com</p>
<p>Dexter Québec Inc. Fasken Martineau PO Box 242, The Stock Exchange Tower 800 Victoria Place, Suite 3700 Montréal, QC H4Z 1E9 Attention : Brandon Farber Email : bfarber@fasken.com</p>	<p>DVB Bank S.E. Bennett Jones LLP Ben 4500 Bankers Hall East, 855 2nd Street S.W. Calgary, Alberta T2P 4K7 Att.: Patrick J. Brennan Email: brennanp@bennettjones.com</p>
<p>Dynamitage Castonguay Ltée Hackett Campbell Bouchard s.e.n.c. 80 rue Peel, Sherbrooke QC J1H 4K1 Attention: Me Julien Collin-Piché Email: julien.collin@hcblegal.com</p>	<p>Eabametoong First Nation; Ginoogaming First Nation; Constance lake First Nation; Long Lake #58 First Nation; Aroland First Nation; and Marten Falls First Nation Miller Thomson SENCRL / LLP 1000, rue De La Gauchetière Ouest, bureau 3700, Montréal (Québec) H3B 4W5 Att : Stéphane Hébert; Email : shebert@millerthomson.com</p>
<p>Gérald Leblond Ltée Avocats BSL Inc. 160 rue de l'Évêché West, Suite 202 Rimouski, QC G5L 4H9 Attention: Chantal Gagnon Guyllaume Amiot Email: cgagnon@avocatsbsl.com gamiot@avocatsbsl.com</p>	<p>Golder Associates Ltd. BCF s.e.n.c.r.l. / LLP 1100, boulevard René-Lévesque Ouest, 25e étage, Montréal (Québec) , H3B 5C9 Attention : Bertrand Giroux Email : bertrand.giroux@bcf.ca</p>

<p>Government of Newfoundland and Labrador Department of Justice and Public Safety</p> <p>Attention: Todd Stanley, Assistant Deputy Minister – Courts and Legal Services</p> <p>Email: toddstanley@gov.nl.ca</p>	<p>Groupe Unnu-EBC s.e.n.c. and EBC Inc.</p> <p>Borden Ladner Gervais 1000 De La Gauchetière Street West, Suite 900 Montréal, QC H3B 5H4</p> <p>Attention: Gabriel Lefebvre Francois Gagnon Marc Duchesne Ouassim Tadlaoui</p> <p>Email: GLefebvre@blq.com fgagnon@blq.com mduchesne@blq.com otadlaoui@blq.com</p>
<p>Iron Ore Company of Canada</p> <p>Langlois, avocats sencri 1250, boul. René-Lévesque Ouest Montréal Qc H3B 4W8</p> <p>Attention: Gerry Apostolatos; Dimitri Maniatis; Daniel Baum</p> <p>Email: gerry.apostolatos@langlois.ca; dimitri.maniatis@langlois.ca; daniel.baum@langlois.ca</p>	<p>Jacques Blanchard, Arpenteur-geomètre Inc</p> <p>Besnier Dion Rondeau S.E.N.C. Avocats 865, Boul. Laure, Sept-Îles (Québec) G4R 1Y6</p> <p>Attention : Luc Dion Email : besnier.avocats@cqcable.ca</p>
<p>KeyBank National Association</p> <p>127 Public Square Second Floor, Cleveland, Ohio 44114-1306</p> <p>Attention: Michael A. Axel, Esq. Senior Vice President & Senior Counsel</p> <p>Email: michael_axel@keybank.com</p>	<p>Kilotech Contrôle Inc. Kilotech-Contrôle (1995) Inc.</p> <p>Simard Boivin Lemieux 1700 Talbot Blvd., Suite 420 Chicoutimi, QC G7H 7Y1</p> <p>Attention: Alain Provencher Email: a.provencher@sblavocats.com</p>
<p>Maxam Explosives, Inc.</p> <p>Fasken Martineau PO Box 242, The Stock Exchange Tower 800 Victoria Place, Suite 3700 Montréal, QC H4Z 1E9</p> <p>Attention : Brandon Farber Email : bfarber@fasken.com</p>	<p>Metso Shared Services Ltd.</p> <p>Langlois, avocats sencri 1250, boul. René-Lévesque Ouest Montréal Qc H3B 4W8</p> <p>Attention: Gerry Apostolatos Daniel Baum</p> <p>Email: gerry.apostolatos@langlois.ca daniel.baum@langlois.ca</p>

<p>MFC Industrial Ltd. BCF S.E.N.C.R.L. / LLP 1100 René-Lévesque West, Suite 2500 Montréal, QC H3B 5C9</p> <p>Attention : Claude Paquet, Gary Rivard Email : claude.paquet@bcf.ca gary.rivard@bcf.ca</p> <p>AND</p> <p>Sangra, Moller LLP 925 W Georgia St Vancouver, BC V6C 3L2</p> <p>Attention: Rod Talaifar, Harjit Sangra</p> <p>Email: rtalaifar@sanqramoller.com hsangra@sanqramoller.com</p>	<p>Minister of Natural Resources; Minister of Environment and Conservation; Minister of Municipal and Intergovernmental Affairs; and Minister of Finance</p> <p>C/O - Attorney General of Newfoundland and Labrador</p> <p>Department of Justice and Public Safety 4th Floor, East Block, Confederation Building PO Box 8700, St. John's, NL A1B 4J6 Email: leggcounsel@gov.nl.ca</p>
<p>Ministère de la Justice du Québec Direction des Affaires Juridiques Énergie et Ressources naturelles Forêts, Faune et Parcs 5700, 4^e avenue Ouest, B-301 Québec, Québec G1H 6R1</p> <p>Attention : Isabelle Giguère Email: isabelle.giguere@mem.gouv.qc.ca</p>	<p>Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques</p> <p>Direction des affaires juridiques - MDDELCC 675, boul. René Lévesque Est, 5e étage Québec (Québec) G1R 5V7</p> <p>Attention : Anne Parent, Avocate Email : anne.parent@mddelcc.gouv.qc.ca</p> <p>Direction régionale de l'analyse et de l'expertise de la Côte-Nord 818, boulevard Laure Sept-Îles (Québec) G4R 1Y8</p> <p>Attention : Alain Gaudreault, Directeur Régional Email : alain.gaudreault@mddelcc.gouv.qc.ca</p>

<p>Morneau Shepell <i>(Wabush Mines Replacement Plan's Administrator)</i></p> <p>7071 Bayers Rd, suite 3007 Halifax, NS B3L 2C2</p> <p>Attention : Paul Chang Email: pchang@morneaushepell.com</p> <p>Attention : Paula Boyd Email: pboyd@morneaushepell.com</p> <p>Attention : Bettina Quistgaard Email: bquistgaard@pinklarkin.com</p> <p>Attention : Ronald Pink Email: rpink@pinklarkin.com</p>	<p>Non-Union Employees and Retirees <i>(Michael Keeper and Terence Watt, rep.)</i></p> <p>Scheib Legal / Étude Légale 600, de Maisonneuve West, Suite 1700 Montréal, Québec H3A 3J2</p> <p>Attention : Nicholas Scheib Email: nick@scheib.ca</p> <p>Koskie Minsky LLP 20 Queen Street West, Suite 900 Toronto, Ontario M5H 3R3</p> <p>Attention : Andrew J. Hatnay Barbara Walancik</p> <p>Email: ahatnay@kmlaw.ca bwalancik@kmlaw.ca</p>
<p>Office of the Superintendent of Financial Institutions (OSFI)</p> <p>Department of Justice – Canada Surintendant des Institutions Financières Guy-Favreau Complex 200 René-Lévesque Blvd. West, 9th Floor Montréal, Québec H2Z 1X4</p> <p>Attention: Pierre Lecavalier Email: pierre.lecavalier@justice.gc.ca</p>	<p>Quebec North Shore and Labrador Railway Company Inc.</p> <p>Langlois, avocats sncrl 1250, boul. René-Lévesque Ouest Montréal Qc H3B 4W8</p> <p>Attention: Gerry Apostolatos Dimitri Maniatis Daniel Baum</p> <p>Email: gerry.apostolatos@langlois.ca dimitri.maniatis@langlois.ca daniel.baum@langlois.ca</p>
<p>Quebec Iron Ore Inc. Champion Iron Limited</p> <p>McCarthy Tétrault LLP 1000 De La Gauchetière Street West Montréal, Québec</p> <p>Attention: Philippe Bélanger Jocelyn Perreault Marc Dorion Louis-Nicolas Boulanger</p> <p>Email: pbelanger@mccarthy.ca jperreault@mccarthy.ca mdorion@mccarthy.ca lnboulanger@mccarthy.ca</p>	<p>Regions Commercial Equipment Finance LLC</p> <p>BCF s.e.n.c.r.l. / LLP 1100, boulevard René-Lévesque Ouest, 25e étage, Montréal (Québec) H3B 5C9 CANADA</p> <p>Attention : Gary Rivard Email : gary.rivard@bcf.ca</p>

<p>Retraite Québec 2600, boul. Laurier, Suite 501 Québec, Québec G1V 4T3</p> <p>Attention: Marie-Josée Comeau Louis Robillard</p> <p>Email: marie-josee.comeau@retraitequebec.gouv.qc.ca louis.robillard@retraitequebec.gouv.qc.ca</p>	<p>Ritchie Bros Auctioneers (Canada) Ltd. <i>Stikeman Elliott</i> 1155, René-Lévesque Blvd. West, 40th Floor Montréal, Québec H3B 3V2</p> <p>Attention: Danny Duy Vu Email: ddvu@stikeman.com</p>
<p>Royal Bank of Canada <i>Stewart McKelvey</i> Suite 1100, Cabot Place, 100 New Gower Street St. John's, NL</p> <p>Attention: Neil Jacobs Email: njacobs@stewartmckelvey.com</p>	<p>Shetush-Ondel Inc. <i>Besnier Dion Rondeau S.E.N.C. Avocats</i> 865, Boul. Laure, Sept-Îles (Québec) G4R 1Y6</p> <p>Attention : Luc Dion Email : besnier.avocats@cqocable.ca</p>
<p>SMS Equipment Inc. <i>Fasken Martineau</i> PO Box 242, The Stock Exchange Tower 800 Victoria Place, Suite 3700 Montréal, QC H4Z 1E9</p> <p>Attention: Guillaume-Pierre Michaud Email: gmichaud@fasken.com</p>	<p>Société Ferroviaire et Portuaire de Pointe-Noire s.e.c. <i>McCarthy Tétrault LLP</i> 2500 – 1000 De La Gauchetière Street West Montréal, QC H3B 0A2</p> <p>Attention: Alain N. Tardif Email: notification@mccarthy.ca atardif@mccarthy.ca</p>
<p>Superintendent of Pensions (Newfoundland and Labrador) Service NL Government of Newfoundland and Labrador 2nd Floor, West Block, Confederation Bldg 100 Prince Phillip Drive, St. John's, NL A1B 4J6</p> <p>Attention: Michael Delaney, Director, Pension Benefit Standards Division</p> <p>Email : MichaelPDelaney@gov.nl.ca</p> <p><i>Irving Mitchell Kalichman</i> 3500, De Maisonneuve Blvd. West, Suite 1400 Montréal, Québec H3Z 3C1</p> <p>Attention : Doug Mitchell Email : dmitchell@imk.ca</p>	<p>Syndicat des Métallies, Section Locale 9996, Section Locale 6254, Section Locale 6285 <i>Philon Leblanc Beaudry Avocats s.a.</i> 5000, boul. des Gradins, bureau 280 Québec (Québec) G2J 1N3</p> <p>Attention : Daniel Boudreault; Jean-François Beaudry Email : dboudreault@plba.ca jfbaudry@plba.ca</p> <p>...</p> <p>United Steelworkers – National Office 234, Eglinton Avenue East, 8th Floor Toronto, Ontario M4P 1K7</p> <p>Attention: Katrina Peddle Email: kpeddle@usw.ca</p>

<p>The Bank of Nova Scotia <i>Kugler Kandestlin, LLP (Québec Counsel)</i> 1 Place Ville Marie, Suite 2101 Montréal, QC H3B 2C6 Attention : Jeremy Cuttler David Stolow Email : jcuttler@kklex.com; dstolow@kklex.com</p> <p><i>Cassels Brock LLP (Ontario Counsel)</i> Suite 2100, Scotia Plaza 40 King Street West Toronto, ON M5H 3C2 Attention: Joseph J. Bellissimo Keri Wallace Email: jbellossimo@casselsbrock.com kewallace@casselsbrock.com</p>	<p>Town of Wabush 15, Whiteway Dr. P.O. Box 190 Wabush, NL A0R 1B0 Att. : Charlie Perry, Town Manager Email : townmanager@wabush.ca</p>
<p>Tyco International du Canada Ltée (AKA SimplexGrinnell) <i>Dunton Rainville S.E.N.C.R.L.</i> Tour de la Bourse, 43e étage 800, Square Victoria, C.P. 303 Montréal (Québec) H4Z 1H1 Att. : Gilles Metcalfe Email : gmetcalfe@duntonrainville.com</p>	<p>Ville de Sept-îles <i>Stein Monast LLP</i> 70, Dalhousie, Suite 300 Québec, Québec G1K 4B2 Att. : Richard Laflamme Marc Germain Antoine Beaudoin Camille Roy Martin Roy Email : richard.laflamme@steinmonast.ca marc.germain@steinmonast.ca antoine.beaudoin@steinmonast.ca camille.roy@steinmonast.ca Martin.Roy@SteinMonast.ca</p>

<p>Wesco Distribution Canada LP <i>Dunton Rainville S.E.N.C.R.L.</i> Tour de la Bourse, 43e étage 800, Square Victoria, C.P. 303 Montréal (Québec) H4Z 1H1 Attention: Thomas Cliche Email : TCliche@DuntonRainville.com</p>	<p>Worldlink Resources Limited <i>Clifford Chance Europe LLP</i> 9 Place Vendome. CS 50018 75038 Paris Cedex 01, France Attention: Audley Sheppard Simon Greenberg Karolina Rozycka Email: audley.sheppard@cliffordchance.com simon.greenberg@cliffordchance.com karolina.rozycka@cliffordchance.com <i>BCF Business Law</i> 25th Floor 1100 René-Lévesque Blvd. West Montréal, QC H3B 5C9 Attention : Éric Ouimet Bertrand Giroux Frédéric Côté Email : eric.ouimet@bcf.ca bertrand.giroux@bcf.ca frederic.cote@bcf.ca <i>Perley-Robertson, Hill & McDougall LLP/s.r.l.</i> Constitution Square, 400-340 Albert Street Ottawa, ON K1R 0A5 Attention: John Siwiec R. Aaron Rubinoff Email: jsiwiec@perlaw.ca arubinoff@perlaw.ca</p>
<p>WSP Canada Inc. <i>Langlois, avocats sncrl</i> 1250, boul. René-Lévesque Ouest Montréal Qc H3B 4W8 Attention : Marc-André Sansregret Reynald Auger Email : marc-andre.sansregret@langlois.ca reynald.auger@langlois.ca</p>	

Emails : bernard.boucher@blakes.com; sebastien.guy@blakes.com; steven.weisz@blakes.com; milly.chow@blakes.com; arvo.shalviri@blakes.com; nigel.meakin@ficonsulting.com; steven.bissell@ficonsulting.com; ellen.dong@ficonsulting.com; michael.basso@ficonsulting.com; evan.cobb@nortonrosefulbright.com; syvain.rigaud@nortonrosefulbright.com; chrystal.ashby@nortonrosefulbright.com; AndreAnne.Fortin@nortonrosefulbright.com; awinton@counsel-toronto.com; mgottlieb@counsel-toronto.com; gerry.apostolatos@langlois.ca; mdesrosiers@osler.com; mlaroche@millerthomson.com; brennanp@bennettjones.com; dimitri.maniatis@langlois.ca; daniel.baum@langlois.ca; gary.rivard@bcf.ca; lcuttler@kklex.com; jbellissimo@casselsbrock.com; kewallace@casselsbrock.com; audley.sheppard@cliffordchance.com; simon.greenberg@cliffordchance.com; karolina.rozyccka@cliffordchance.com; eric.ouimet@bcf.ca; bertrand.giroux@bcf.ca; frederic.cote@bcf.ca; lsiwiec@perlaw.ca; arubinoff@perlaw.ca; gbernard@fasken.com; bfarber@fasken.com; cgaqnon@avocatsbsl.com; GLefebvre@blq.com; fgaonon@blq.com; a.provencher@sblavocats.com; francois.bouchard@clcw.qc.ca; julien.collin@hcblegal.com; toddstanley@gov.nl.ca; Imorin@fasken.com; gmichaud@fasken.com; qmetcalfe@duntonrainville.com; TCliche@DuntonRainville.com; michael_axel@keybank.com; rschwill@dwpv.com; julie.lambert@cslships.com; besnier.avocats@cqcable.ca; shebert@millerthomson.com; dstolow@kklex.com; jmorissette@osler.com; wael.rostom@mcmillan.ca; Emile.Catimeil-Marchand@mcmillan.ca; gmoftat@tqf.ca; roger.simard@dentons.com; louis.dumont@dentons.com; katherineboulianne@bptavocats.com; dboudreault@plba.ca; hbesnier.bdr@cqcable.ca; claud.paquet@bcf.ca; rtalaifar@sanqramoller.com; hsangra@sanqramoller.com; pierre.lecavalier@justice.qc.ca; dmitcheil@imk.ca; ahatnav@kmlaw.ca; jfbaudry@plba.ca; MichaelPDelaney@gov.nl.ca; nick@scheib.ca; Tony.Reyes@nortonrosefulbright.com; anne.parent@mddelcc.gouv.qc.ca; gquerry@mccarthy.ca; mbourbonnais@mccarthy.ca; [Allan.Matte@otc-cta.qc.ca](mailto>Allan.Matte@otc-cta.qc.ca); alain.gaudreault@mddelcc.gouv.qc.ca; kpeddle@usw.ca; legcounsel@gov.nl.ca; jean.francois.delisle@clcw.ca; niacobs@stewartmckelvey.com; reynald.auger@langlois.ca; jfquavin@millerthomson.com; mduchesne@blq.com; otadlaoui@blq.com; isabelle.giquere@mem.gouv.qc.ca; michael.hanlon@mcmillan.ca; townmanager@wabush.ca; pbelanger@mccarthy.ca; jperreault@mccarthy.ca; mdorion@mccarthy.ca; lnboulanger@mccarthy.ca; marc-andre.sansregret@langlois.ca; richard.lafamme@steinmonast.ca; jysimard@lavery.ca; dmandilaras@lavery.ca; pchang@morneaushepell.com; pboyd@morneaushepell.com; bquistgaard@pinklarkin.com; rpink@pinklarkin.com; bwatancik@kmlaw.ca; elizabeth-brown@hicksmorley.com; john-prezioso@hicksmorley.com; gamiot@avocatsbsl.com; notification@mccarthy.ca; atardif@mccarthy.ca; marc.germain@steinmonast.ca; ddvu@stikeman.com; a.querette@betonprovincial.com; antoine.beaudoin@steinmonast.ca; camille.roy@steinmonast.ca; martin.roy@steinmonast.ca; marie-josée.comeau@retraitequebec.gouv.qc.ca; louis.robillard@retraitequebec.gouv.qc.ca

Schedule E ^{1/13}

TIMETABLE FOR PERFECTION OF REFERENCE

EVENT	DEADLINE
Filing of Notices of Intention to Intervene (Order, para. 3)	May 31, 2017
Filing of Applications for Intervenor Status (Order, para. 4)	May 31, 2017
Status Hearing (Order, para. 8)	June 9, 2017
Filing of Evidentiary Materials	(TBD at status hearing)
Attorney General of Newfoundland to file Factum	July 26, 2017
Attorney General of Canada, other Attorney Generals and Intervenors to file Factums	August 23, 2017
Attorney General of Newfoundland to file reply Factum, if any	September 8, 2017
Hearing of Reference	September 21-22, 2017

Appendix B

The May 9 Letter

Norton Rose Fulbright Canada LLP
1 Place Ville Marie, Suite 2500
Montréal, Quebec H3B 1R1 Canada

F: +1 514.286.5474
nortonrosefulbright.com

Sylvain Rigaud
+1 514.847.
sylvain.rigaud@nortonrosefulbright.com

Your reference

Our reference
01028478-0001

May 9, 2017

Without Prejudice

Sent By E-mail

Rolf Pritchard, Q.C.
Director - Civil Division
Office of the Attorney General
Department of Justice & Public Safety
Government of Newfoundland and Labrador

Dear Confrère,

**In the matter of the plan of compromise or arrangement of: Wabush Iron Co. Limited et al.
S.C.M. 500-11-048114-157**

We are writing to you to express our concerns and position in connection with the *ex parte* order issued on May 5th, 2017 (the **May 5th Order**) by the Newfoundland & Labrador Court of Appeal in relation to the reference initiated under the authority of Section 13 of the *Judicature Act*, R.S.N.L. 1990, c. J-4 and in furtherance of Orders in Council 2017-103 and 2017-137 (the **Reference**).

As you know, we act on behalf of FTI Consulting Canada Inc., in its capacity as court-appointed monitor (the **Monitor**) to various parties subject to orders issued on January 27th and May 20th, 2015 pursuant to the terms of the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the **CCAA**) by the Superior Court of Québec, commercial division, for the District of Montreal (the **CCAA Court**).

For ease of reference, capitalized terms not otherwise defined in this letter shall have the meaning ascribed to them in the Monitor's Motion for Directions dated September 20, 2016, as amended on April 13, 2017 (the **Motion for Directions**), a copy of which is attached as Schedule A.

The May 5th Order and the three (3) questions to be submitted to the Newfoundland & Labrador Court of Appeal by way of the Reference (the **Reference Questions**), as currently drafted, appear to be inextricably related to the pending proceedings before the CCAA Court in the above-captioned matter, presided and supervised by the Honourable Justice Stephen W. Hamilton, J.S.C. more specifically as they concern the Wabush CCAA Parties (the **Wabush CCAA Proceedings**). As such, there exists in our view a significant risk that the Reference will be in part duplicative in light of the ongoing Wabush CCAA Proceedings, thereby potentially leading certain interested parties to mistakenly believe that issues relating to the Wabush CCAA Parties are open for adjudication before both the CCAA Court and the Newfoundland & Labrador Court of Appeal. We are concerned that the Reference could amount to a collateral attack of orders previously made by the CCAA Court.

We list in Schedule B hereto various orders issued by the CCAA Court (as supplemented by the relevant Motion records, including the Monitor's reports and exhibits) which in our view could have an impact on or be relevant to the Reference Questions to be put before the Newfoundland & Labrador Court of Appeal.

We have reached out on numerous occasions to you and your colleagues (Philip Osborne and Raylene Stokes) to share our views as to the importance of limiting the scope of the proposed Reference Questions to matters of

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statutory interpretation *in abstracto* as they relate to Section 32 of the *Pension Benefits Act*, 1997, S.N.L. 1996, c. P-4.01 (**PBA**), without overreaching and veering into the adjudication of the rights of parties already engaged in the Wabush CCAA Proceedings. We have specifically asked to be consulted with respect to the wording of the notices to be sent in connection with the Reference so as to avoid confusion amongst stakeholders and ensure that the Reference process does not run afoul of the current stay of proceedings against the Wabush CCAA Parties or disrupt the conduct of the Wabush CCAA Proceedings.

In this respect, we directed you to paragraph 7 of the Wabush Initial Order, which reads as follows:

ORDERS that, until and including June 19, 2015*, or such later date as the Court may order the (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 CCAA Parties, or affecting the Business operations and activities of the CCAA Parties (the "**Business**") or the Property, including as provided hereinbelow except with the leave of this Court. Any and all proceedings currently under way against any or in respect of the CCAA Parties or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.

*The current Stay Period has been extended and is set to expire on June 30, 2017, subject to further order of the CCAA Court.

The ability of the Monitor to seek directions and the CCAA Court's jurisdiction to hear the Motion for Directions are based on paragraph 68 of the Claims Procedure Order, paragraph 65 of the Wabush Initial Order as well as Sections 9(1) and 11 CCAA, which read as follows:

9.(1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

(...)

11. Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

The CCAA Court issued on January 30th, 2017, its decision (the **January 30th Order**) with respect to various jurisdictional issues and other preliminary objections raised with respect to the Motion for Directions by several parties, including Her Majesty in Right of Newfoundland, as represented by the Superintendent of Pensions. We attach for your convenience copy of the January 30 Order as Schedule C. The position of the parties in relation to said jurisdictional issues is summarized at paragraphs 23 to 28 of the January 30th Order. In declining to refer any of the issues to the courts with jurisdiction in Newfoundland & Labrador, including specifically the questions as formulated by the representatives of the salaried employees and retirees (at paragraph 25) – which have since been adopted *verbatim* as the Reference Questions – the CCAA Court relied on well-established precedents that favour a single forum to hear all disputes relating to an insolvent debtor (at paragraphs 29 to 33) and properly exercised its discretion not to seek the assistance of another court on the basis of legal, factual and practical considerations (at paragraphs 39 to 89), including the position of the United Steel Workers representing the unionized pensioners of the Wabush CCAA Parties, which supported the jurisdiction of the CCAA Court and objected to the referral of certain issues before the courts with jurisdiction in Newfoundland & Labrador (at paragraph 80), as well as the fact that a plurality of non-unionized pensioners are residents in the Province of Quebec (at paragraph 77).

The January 30th Order was not appealed from, and all interested parties, including Her Majesty in Right of Newfoundland, as represented by the Superintendent of Pensions, have since agreed to debate the merits of the Motion for Directions before the CCAA Court on June 26th and 27th, 2017.

As for the Reference Questions, we have already expressed concerns about the formulation of questions 1 and 3 and the extent to which the Newfoundland & Labrador Court of Appeal will be asked to determine the scope and dollar value of the deemed trusts, liens and charges, that may arise pursuant to Section 32 PBA, as this provision applies to the Pension Plans at stake in the Wabush CCAA Proceedings and more specifically the Motion for Directions. Further, the preamble to question 1 appears unduly argumentative and, in our view, obfuscates the interplay between Section 32 PBA and the applicable provisions of the CCAA and the terms of the orders issued to date in the Wabush CCAA Proceedings.

The foregoing was noted by Mr. Justice Hamilton in the January 30th Order (at paragraph 66), wherein he also pointed out that such a question, inasmuch as the Wabush CCAA Parties are concerned, may well be moot:

Finally, as is typical in these cases, there is a close interplay between the NLPBA and the CCAA. The first question proposed by the representatives of the salaried employees and retirees is: “Assuming there is no issue of paramountcy, what is the scope of section 32 in the NLPBA deemed trusts”. The scope of the NLPBA is not relevant if the NLPBA does not apply because of a conflict with the CCAA and federal paramountcy. In that sense, there may not even be a need to deal with the interpretation of the NLPBA.

As previously reported, we also seriously question the appropriateness of seeking the opinion of the courts of another forum than Québec with respect to question 2(b).

Before the issuance of the May 5th Order, we had specifically asked that you consider the possibility of coordinating the Reference with the ongoing Wabush CCAA Proceedings, and had asked to discuss the formulation of the Reference Questions and the wording of the notices, the whole in order to avoid any actual or perceived duplication, inconsistency or contradiction in the parallel processes, to no avail to date. We note that a status hearing is set to take place on June 9, 2017 before the Newfoundland & Labrador Court of Appeal, but are of the view that it will be too late at that point to properly address some of the concerns outlined above.

It is our view that the Monitor and its undersigned attorneys should have been consulted in connection with the May 5th Order and that same should not have been granted on an *ex parte* basis. We formally reiterate the invitation to discuss the foregoing with you at your earliest convenience, while we continue to contemplate the possibility to raise these issues directly before the CCAA Court and/or the Newfoundland & Labrador Court of Appeal.

We are of the view that the Reference Questions should be limited to the matters relating exclusively to the interpretation of Section 32 PBA and that all other matters relating to the Wabush CCAA Parties or the Wabush CCAA Proceedings should be dealt with exclusively by the CCAA Court.

We would greatly appreciate a reply with respect to the foregoing by the end of the week.

Rolf Pritchard, Q.C.
May 9, 2017

Copy of this letter and of the May 5th Order will be circulated to the parties on the Service List in the Wabush CCAA Proceedings.

Yours truly,


Sylvain Rigaud
Partner

SAR/ch/jrl

Enclosures:

Schedule A – Motion for Directions with Respect to Pension Claims;
Schedule B – List of Relevant Orders with respect to the Wabush CCAA Parties; and
Schedule C – January 30th Order.

Appendix C

The Monitor's Reference Application

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL

IN THE MATTER OF Section 13
of Part I of the *Judicature Act*,
R.S.N.L. 1990, c.J-4, as amended

AND

IN THE MATTER OF Section 32
of the *Pension Benefits Act*,
S.N.L. 1997, c.P-4.01

AND

IN THE MATTER OF a Reference
of the Lieutenant Governor in Council
to the Court of Appeal, for its hearing,
consideration and opinion on the
interpretation of the scope of section 32
of the *Pension Benefits Act*

APPLICATION TO THE COURT WITH SUPPORTING AFFIDAVIT

This is notice that the Applicant, FTI Consulting Canada Inc., in its capacity as court-appointed monitor of the Wabush CCAA Parties (as defined below), applies for an order granting the following relief:

1. That, pursuant to Rule 31(2) of the *Civil Appeal Rules*, the application and order dated 5 May 2017 (the "May 5th Order") in the within matter be reheard by a panel of this Honourable Court;
2. That Paragraph 5 of the May 5th Order be stayed until full argument can be heard with respect to the Applicant's position with respect to the timing and scope of the Reference.

Subject matter of the application:

1. The Applicant, FTI Consulting Canada Inc., is a body corporate incorporated under the laws of Canada and acts as court-appointed monitor (“**Monitor**”) to Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively, the “**Wabush CCAA Parties**”). It is referred to in paragraph 2 of the May 5th Order as the “Monitor of the Quebec Proceeding”. A copy of the May 5th Order is attached as **Schedule “A”** to this application.
2. The “Quebec Proceeding” refers to proceedings instituted pursuant to the terms of the *Companies’ Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the “**CCAA**”) before the Quebec Superior Court for the district of Montreal (“**CCAA Court**”) in the court record bearing number 500-11-048114-157 (the “**CCAA Proceedings**”).
3. On September 20, 2016, the Monitor filed a *Motion for Directions with respect to pension claims*, as amended on April 13, 2017 (the “**Motion for Directions**”) with respect (a) to the priority of pensions claims filed by the plan administrator of two pension plans, the whole pursuant to the order issued by the CCAA Court on November 5, 2015, as amended on November 16, 2015, which approved and established a procedure for the filing of creditors’ claims against, among others, the Wabush CCAA Parties and their directors and officers, as well as (b) the applicability and scope of deemed trusts, if any, under the *Pensions Benefits Standards Act*, R.S.C. 1985, c. 32 (2nd Supp.) (the “**PBSA**”) and the Newfoundland & Labrador *Pensions Benefits Act*, S.N.L. 1996, c. P-4.01 (the “**PBA**”) as well as the Québec *Supplemental Pension Plans Act*, R.L.R.Q., c. R-15.1 (the “**SPPA**”). A copy of the Motion for Directions is attached as **Schedule “B”** to this application.
4. On January 30, 2017, Justice Hamilton of the CCAA Court rendered a written decision (the “**January 30 Decision**”) with respect to the request of some parties within the CCAA Proceedings to have certain questions respecting the scope of the PBA and its effect on the CCAA Proceedings referred instead to the Court in Newfoundland and Labrador prior to the hearing on the Motion for Directions. A copy of this decision is attached as **Schedule “C”** to this application.
5. The questions sought to be addressed in the Reference can be found at paragraph 25 of the January 30 Decision , and are as follows:
 1. The Supreme Court of Canada has confirmed in *Indalex* that provincial laws apply in CCAA proceedings, subject only to the doctrine of paramourty. Assuming there is no issue of paramourty, what is the scope of section 32 in the NPBA [NLPBA] deemed trusts in respect of:
 - a) unpaid current service costs;
 - b) unpaid special payments; and,

- c) unpaid wind-up liability.
2. The Salaried Plan is registered in Newfoundland and regulated by the NPBA.
- a) (i) Does the PBSA deemed trust also apply to those members of the Salaried Plan who worked on the railway (i.e., a federal undertaking)?

(ii) If yes, is there a conflict with the NPBA and PBSA if so, how is the conflict resolved?
 - b) (i) Does the SPPA also apply to those members of the Salaried Plan who reported for work in Québec?

(ii) If yes, is there a conflict with the NPBA and SPPA and if so, how is the conflict resolved?

(iii) Do the Quebec SPPA deemed trusts also apply to Québec Salaried Plan members?
3. Is the NPBA lien and charge in favour of the pension plan administrator in section 32(4) of the NPBA a valid secured claim in favour of the plan administrator? If yes, what amounts does this secured claim encompass?
6. The CCAA Court rejected the argument that these questions ought to be decided by Courts in Newfoundland and Labrador. These questions are identical to the ones forming the subject matter of the within Reference.
7. One of the parties requesting that certain questions be referred to the Courts in Newfoundland and Labrador in the CCAA Proceedings was Her Majesty in Right of Newfoundland and Labrador.
8. No appeal was taken of the January 30 Decision.
9. Subsequent to the January 30 Decision in the CCAA Proceedings, but prior to the *ex parte* application leading to the May 5th Order, counsel for the Applicant made multiple attempts to enter into discussions with counsel for Her Majesty in Right of Newfoundland and Labrador to express concerns with the potential overlap between the intended Reference and the CCAA Proceedings, particularly in respect of those questions posed within the Reference that are not limited to abstract interpretation of section 32 PBA.
10. The Applicant has concerns respecting the content of the Reference questions, which it desires to raise before this Honourable Court prior to the status hearing scheduled for June 9, 2017 and prior to the publication of notices (provided for at paragraph 5 of the May 5th Order, in the form of Appendix B thereto, hereinafter the “**Reference Notice**”) in relation to the Reference.

11. Of paramount importance at this time is paragraph 5 of the May 5th Order, which provides for publication of the Reference Notice twice before May 26, 2017. The Applicant is particularly concerned that the Reference Notice as it currently exists is likely to cause confusion amongst parties and stakeholders, and further cause the Reference process to run afoul of the current stay of proceedings against the Wabush CCAA Parties or disrupt the conduct of the hearing on the Motion for Directions before the CCAA Court.
12. The stay of proceedings in place in favour of the Wabush CCAA Parties in the CCAA Proceedings stands until June 30, 2017 and can be the subject of further extensions. The scope of the stay is broad enough to encompass the Reference proceeding, as appears from paragraph 7 of the initial order issued in the CCAA Proceedings in respect of the Wabush CCAA Parties, dated May 20, 2015 (as subsequently, amended, rectified or restated from time to time):

ORDERS that, until and including June 19, 2015, or such later date as the Court may order the (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 CCAA Parties, or affecting the Business operations and activities of the CCAA Parties (the "Business") or the Property, including as provided hereinbelow except with the leave of this Court. Any and all proceedings currently under way against any or in respect of the CCAA Parties or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.

13. As to the whole of the Reference, the Applicant is concerned, even if the Reference is only consultative in nature and not binding or adjudicative of the issues between the parties (including more importantly the issues raised by the Motion for Directions pending in the CCAA Proceedings), that a duplicative and parallel process on inextricably related issues may give rise to an actual or perceived jurisdictional conflict, which may unduly undermine the legitimacy of the decisions of the CCAA Court.
14. Based on well-established precedents concerning the nature and scope of reference proceedings, the Applicant is of the view that the Reference should be limited to the matters relating exclusively to the interpretation of Section 32 of the PBA and that all other matters relating to the Wabush CCAA Parties or the CCAA Proceedings should be dealt with exclusively by the CCAA Court.
15. The Applicant is acutely aware that issues with respect to the scope of the Reference are the sorts of issues which this Honourable Court likely envisaged as being discussed at the upcoming status hearing, but submits that the timing of the public Reference Notices requires that some of these issues be addressed prior to that date.

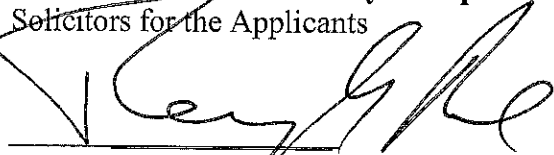
16. The balance of convenience favours delaying the sending of the Reference Notices until the scope of the Reference has been clarified. Clarification will enable the Reference hearing to be more streamlined, as the number of parties interested in an abstract question of Newfoundland law may likely be fewer than the number of parties who will wish to be heard on questions triggering jurisdictional questions across provinces, proceedings, and legislative levels.
17. If parties who might not be interested in a narrower Reference are forced to engage counsel and appear now to deal with a broader range of issues, then those parties will have expended time and resources, and engaged the resources of this Honourable Court, unnecessarily.
18. The Applicant therefore requests that the *ex parte* application giving rise to the May 5th Order be reheard as an *inter partes* matter before a panel of this Honourable Court. The Applicant also requests costs of this application as against Her Majesty in Right of Newfoundland and Labrador.

The affidavit that is necessary to support or provide the foundation for the application is attached.

The application is set to be heard on the 23rd day of May, 2017, at 10:00 a.m. or at such earlier date as may be set by this Court.

DATED AT St. John's, Newfoundland and Labrador, this 15th day of May, 2017.

Martin Whalen Hennebury Stamp
Solicitors for the Applicants



Per: Terry G. Rowe, Q.C.
Whose address for service is
P.O. Box 5910
15 Church Hill
St. John's, NL A1C 5X4

Norton Rose Fulbright Canada
Solicitors for the Intervenor

Per: Sylvain Rigaud

Whose address for service is
1 Place Ville Marie, Suite 2500
Montreal, Quebec, H3B 1R1

TO: Supreme Court of Newfoundland and Labrador
Court of Appeal
Duckworth Street
St. John's, NL

TO: Department of Justice and Public Safety
PO Box 8700
4th Floor, East Block
Confederation Building
St. John's, NL A1B 4J6
Canada
Attention: Rolf Pritchard, Q.C.

File No. 2017 01H 0029

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL

IN THE MATTER OF Section 13 of Part
I of the *Judicature Act*, RSNL 1990, c. J-4

AND

IN THE MATTER OF Section 32 of the
Pension Benefits Act, 1997, SNL 1996, c.
P-4.01

AND

IN THE MATTER OF a Reference of
The Lieutenant-Governor in Council to the
Court of Appeal for its hearing,
consideration and opinion on the
interpretation of the scope of s. 32 of the
Pension Benefits Act, 1997

ORDER

BEFORE: Green C.J.N.L.

WHEREAS the Attorney General of Newfoundland and Labrador has applied for an order that
the Reference be inscribed for hearing and for an order for directions;

AND UPON HEARING Rolf Pritchard Q.C. and Philip Osborne on behalf of the Attorney
General;

IT IS ORDERED AND DIRECTED THAT:

1. The Reference be inscribed for hearing;
2. The Attorney General shall give notice of the inscription of the Reference and of this
Order, in the attached form marked "A", to:

Filed	May 5/17	JB
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- (a) The Attorney General of Canada;
- (b) The attorneys-general of each other province and territory of Canada;
- (c) FTI Consulting Canada Inc. (the "Monitor" in the Québec Proceeding);
- (d) Those persons named as petitioners in a proceeding in the Québec Superior Court (Commercial Division) identified as File No. 500-11-048114-157 (the "Québec Proceeding"), namely:
 - (i) Bloom Lake General Partner Limited;
 - (ii) Quinto Mining Corporation;
 - (iii) 8568391 Canada Limited;
 - (iv) Cliffs Quebec Iron Mining ULC;
 - (v) Wabush Iron Co. Limited; and
 - (vi) Wabush Resources Inc.;(collectively, the "Petitioners");
- (e) Those persons representing non-unionized pensioners in the Québec Proceeding, namely, Michael Keeper, Terence Watt, Damien LeBel and Neil Johnson (the "Non-unionized Pensioners");
- (f) The bodies representing unionized pensioners in the Québec Proceeding, namely, Syndicat des Métallos, Sections Locales 6254 et 6285 (the "Unionized Pensioners");
- (g) Morneau Shepell Ltd., in its capacity as Replacement Plan Administrator, as named in the Québec Proceeding (the "Replacement Plan Administrator");
- (h) Her Majesty in Right of Newfoundland, as represented by the Superintendent of Pensions (the "NL Superintendent");



- (i) The Attorney General of Canada, acting on behalf of the Office of the Superintendent of Financial Institutions, as named in the Québec Proceeding (the "Canadian Superintendent");
 - (j) Régime de rentes du Québec, as named in the Québec Proceeding (the "Québec Regulator"); and
 - (k) Ville de Sept-Îles (the "Town").
3. The persons notified in paragraph 2 of this Order shall on or before May 31, 2017 file a Notice of Intention to Intervene with the Registry of the Court if they wish to intervene and be heard, either orally or in writing, in the Reference. Thereafter, such persons who file a Notice shall, unless otherwise ordered by the Court, have the right to be heard in the Reference.
4. Any other persons claiming to be interested parties to the Reference and wishing to intervene and be heard, either orally or in writing, shall on or before May 31, 2017 apply to the Court for leave to intervene, with the application returnable on June 9, 2017.
5. The Attorney General shall cause a notice, in the attached form marked "B", to be published on at least two occasions before May 26, 2017 in each of the newspapers listed in the attached schedule marked "C" and provide proof of publication by filing an affidavit in the Court.
6. Every other party on the service list in the Québec Proceeding, attached as schedule "D", who was not previously listed in paragraph 2 of this Order (collectively, the "Other Parties"), shall be given the notice published in the newspapers under paragraph 5 and they may apply for leave to intervene in the Reference under paragraph 4.



7. The Attorney General of Newfoundland and Labrador, the Attorney General of Canada the other Attorneys General and any person who has given Notice of Intention to Intervene under paragraph 3 or has applied to intervene and been granted intervenor status under paragraph 4 may be at liberty to adduce evidence on the Reference by the filing of materials, subject to further direction and order of the Court.
8. The timetable for the perfection of the Reference and the disposition of other preliminary matters shall, subject to further direction, amplification or modification by the Court, be as set forth in the attached schedule marked "E".
9. A status hearing shall be held on June 9, 2017 at 10:00 A.M. to address, amongst other things:
 - (a) Applications to intervene under paragraph 4 of this order;
 - (b) Whether any group of intervenors may be able to be treated as a class for the purpose of appointing a representative under section 19 of the *Judicature Act*;
 - (c) The nature of any evidence to be filed on the Reference and the manner and timing of its presentation;
 - (d) Any adjustments to the timetable for perfection of the Reference;
 - (e) The setting of dates and times for dealing with any other preliminary applications;
and
 - (f) The giving of any further directions or making of such further orders as may be necessary or desirable to advance the hearing of the Reference.
10. The Attorney General of Newfoundland and Labrador, the Attorney General of Canada and any other person who has given Notice of Intention to Intervene under paragraph 3 or who has applied to intervene and been granted intervenor status under paragraph 4 have



leave to apply for further directions and orders as may be appropriate and as their interests may appear.

DATED at St. John's, NL this 5th day of May 2017.

V Bishop

**COURT
OFFICER**

J

SCHEDULE "B"

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-11-048114-157

SUPERIOR COURT

Commercial Division

(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

**IN THE MATTER OF THE PLAN OF COMPROMISE OR
ARRANGEMENT OF:**

BLOOM LAKE GENERAL PARTNER LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP**

BLOOM LAKE RAILWAY COMPANY LIMITED

WABUSH MINES

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY LIMITED

Mises-en-cause

-and-

**HER MAJESTY IN RIGHT OF NEWFOUNDLAND
& LABRADOR, AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS**

**THE ATTORNEY GENERAL OF CANADA, ACTING ON
BEHALF OF THE OFFICE OF THE SUPERINTENDENT
OF FINANCIAL INSTITUTIONS**

**MICHAEL KEEPER, TERENCE WATT, DAMIEN LABEL
AND NEIL JOHNSON**

UNITED STEEL WORKERS, LOCALS 6254 AND 6285

RETRAITE QUÉBEC

**MORNEAU SHEPELL LTD., IN ITS CAPACITY AS
REPLACEMENT PENSION PLAN ADMINISTRATOR**

Mis-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

**AMENDED MOTION BY THE MONITOR FOR DIRECTIONS
WITH RESPECT TO PENSION CLAIMS**
(Sections 11 and 23(k) of the *Companies' Creditors Arrangement Act*)

TO MR. JUSTICE STEPHEN W. HAMILTON, J.S.C. OR TO ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE MONITOR SUBMITS:

I. INTRODUCTION

1. On January 27, 2015, the Honourable Justice Martin Castonguay, J.S.C., issued an Order (as subsequently amended, rectified and/or restated, the **Bloom Lake Initial Order**) pursuant to the *Companies' Creditors Arrangement Act* (**CCAA**) in respect of the Petitioners Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, and Cliffs Québec Iron Mining ULC (**CQIM**), as well as Mises-en-cause The Bloom Lake Iron Ore Mine Limited Partnership and Bloom Lake Railway Company Limited (collectively, the **Bloom Lake CCAA Parties**), as appears from the Court record;
2. Pursuant to the Bloom Lake Initial Order, *inter alia*, FTI Consulting Canada Inc. was appointed as monitor of the Bloom Lake CCAA Parties (the **Monitor**), and a stay of proceedings was granted in respect of the Bloom Lake CCAA Parties until February 26, 2015 (subsequently extended from time to time, and most recently until September 30, 2016 by Order dated April 20, 2016);
3. On May 20, 2015, the Honourable Justice Stephen W. Hamilton, J.S.C., issued an Order (as subsequently amended, rectified and/or restated, the **Wabush Initial Order**) extending the scope of these CCAA proceedings to the Petitioners Wabush Iron Co. Limited (**Wabush Iron**) and Wabush Resources Inc. (**Wabush Resources**), as well as Mises-en-cause Wabush Mines, an unincorporated contractual joint venture (**Wabush Mines**), Arnaud Railway Company (**Arnaud Railway**), and Wabush Lake Railway Company Limited (**Wabush Railway**) (collectively, the **Wabush CCAA Parties**, and together with the Bloom Lake CCAA Parties, the **CCAA Parties**), as appears from the Court record. For ease of reference a copy of the Wabush Initial Order dated May 20, 2015, as rectified on May 28, 2015, is communicated herewith as **Exhibit R-1**;
4. Pursuant to the Wabush Initial Order (R-1), *inter alia*, the Monitor was appointed as the monitor of the Wabush CCAA Parties, and a stay of proceedings was granted in respect of the Wabush CCAA Parties until June 19, 2015 (subsequently extended from time to time, and most recently until September 30, 2016 by Order dated April 20, 2016);
5. On November 5, 2015, the Honourable Justice Stephen W. Hamilton, J.S.C., issued an order (as amended on November 16, 2015, the **Claims Procedure Order**), which ~~approved and established a procedure for the filing of creditors' claims against the CCAA Parties and their directors and officers (the **Claims Procedure**), as appears from the Claims Procedure Order, a copy of which is communicated in support herewith for ease of reference as **Exhibit R-2**;~~

6. Capitalized terms not otherwise defined herein have the meaning ascribed thereto in the Claims Procedure Order (R-2);
7. Both the Bloom Lake Initial Order and the Wabush Initial Order provide that the Monitor assist the CCAA Parties in dealing with their creditors over the course of the Stay Period, and declare that the Monitor may apply to the Court for directions as becomes necessary in discharging its duties, the whole as appears from, *inter alia*, paragraphs 39 and 65 the Wabush Initial Order (R-1);
8. Moreover, paragraphs 61 and 68 of the Claims Procedure Order (R-2) entitle the Monitor to apply to the Court for advice and directions in connection with the discharge or variation of its powers and duties thereunder;
9. The Monitor hereby applies for directions with respect to the priority of Pension Claims filed by the Plan Administrator pursuant to the Claims Procedure Order (R-2), and the applicability and scope of deemed trusts, if any, under the *Pension Benefits Standards Act*, R.S.C. 1985, c. 32 (2nd Supp.) (**PBSA**) and the Newfoundland & Labrador *Pension Benefits Act*, S.N.L. 1996, c. P-4.01 (**PBA**) as well as the Québec *Supplemental Pension Plans Act*, R.L.R.Q., c. R-15.1 (**SPPA**), the whole as more fully set out below;
10. Specifically, the Monitor is asking the Court to issue an Order in the form of the draft Order communicated herewith as **Exhibit R-3** with respect to the priority of the various components of the Salaried DB Plan Claim and the Union DB Plan Claim (each as defined herein below);

II. OVERVIEW OF WABUSH CCAA PROCEEDINGS

11. As stated in paragraphs 16 to 19 and 21 of the *Motion for the Issuance of an Initial Order* of the Wabush CCAA Parties dated May 19, 2015 (the **Wabush Initial Motion**), a copy of which is communicated herewith as **Exhibit R-4**, there were no operations as of the date of the Wabush Initial Order at either the Wabush Pointe-Noire pellet plant (the **Pointe-Noire Plant**) or the Wabush Mine (as defined in the Wabush Initial Motion);
12. The Pointe-Noire Plant had been shut down in June 2013, while the Wabush Mine was shut down in the first quarter of 2014, and substantially all of the employees at both sites had been terminated or laid off prior to the issuance of the Wabush Initial Order, as stated in paragraphs 37 and 38 and 87 to 96 of the Wabush Initial Motion (R-4);
13. The Wabush Initial Order (R-1) provided for *inter alia*:
 - a) The creation of non-priming charges, including an Administration Charge for an aggregate amount of \$1,750,000, a Directors' Charge for an aggregate amount of \$2,000,000, and an Interim Lender Charge for an aggregate amount of \$15,000,000 (each as defined in the Wabush Initial Order, and collectively referred to as the **CCAA Charges**);
 - b) The permission, but no requirement, for the Wabush CCAA Parties to pay normal cost pension contributions payable on or after the date thereof as follows:

[12] **ORDERS** that the Wabush CCAA Parties 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, bonuses, employee and current service pension contributions, expenses, benefits, vacation pay and termination and severance obligations 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; [...] [Emphasis added]

14. On June 9, 2015, the Court issued an order with respect to the Wabush CCAA Parties (the **Wabush Comeback Order**), a copy of which is communicated herewith for ease of reference as **Exhibit R-5**, which provided for *inter alia*:

- a) The approval on a *nunc pro tunc* basis of the **SISP** (as defined therein) with respect to the Wabush CCAA Parties;
- b) The creation of the **Sale Advisor Charge** (as defined in paragraph 16 thereof);
- c) The priority status of the CCAA Charges and the Sale Advisor Charge, to rank ahead of all Encumbrances (as defined therein), subject to the rights of the various parties having objected to the priming of the Interim Lender Charge;
- d) The adjournment to June 22, 2015 of the debate as to both the proposed priority of the Interim Lender Charge and the suspension by the Wabush CCAA Parties of its special payments to the DB Plans (as defined below), as follows:

[5] **ORDERS** that paragraph 47 of the Wabush Initial Order shall be amended as follows:

[47] **DECLARES** that each of the CCAA Charges shall rank ahead of all hypothecs, mortgages, liens, security interests, priorities, trusts, deemed trusts (statutory or otherwise), charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") [...] affecting the Property of the Wabush CCAA Parties whether or not charged by such Encumbrances [...], with the exception of the Crown deemed trusts for sources deductions described in Section 37(2) CCAA and the sums that could be subject to a claim under Section 38(3) CCAA. For greater certainty, the CCAA Charges only extend to assets or rights against assets over which the Wabush CCAA Parties hold or acquire title and the Interim Lender's Charge is subject to the Permitted Priority Liens (as defined in the Interim Financing Term Sheet). [underlining in the original]

[6] **RESERVES** the rights of Her Majesty in right of Newfoundland and Labrador, as represented by the Superintendent of Pensions, the Syndicat des Métallurgistes, Section Locale 6254, the Syndicat des Métallurgistes, Section 6285 and the Attorney General of Canada to contest the priority of the Interim Lender Charge over the deemed trust(s) as set out in the Notices of Objection filed by each of those parties in response to the Motion, which shall be heard and determined at the hearing scheduled on June 22, 2015. [Emphasis added.]

[...]

[21] **ORDERS** the request by the Wabush CCAA Parties for an order for the suspension of payment by the Wabush CCAA Parties of the monthly amortization payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, *nunc pro tunc* to the Wabush Filing Date is adjourned to June 22, 2015. [Emphasis added.]

[22] ORDERS the request by the Wabush CCAA Parties for an order for the suspension of payment by the Wabush CCAA Parties of the annual lump sum "catch-up" payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, nunc pro tunc to the Wabush Filing Date is adjourned to June 22, 2015; [Emphasis added.]

the whole as it appears from the Wabush Comeback Order (R-5);

15. A copy of the *Motion for the Issuance of an order in respect of the Wabush CCAA parties (1) granting priority to certain CCAA charges, (2) approving a Sale and Investor Solicitation Process nunc pro tunc, (3) authorizing the engagement of a Sale Advisor nunc pro tunc, (4) granting a Sale Advisor Charge, (5) amending the Sale and Investor Solicitation Process, (6) suspending the payment of certain pension amortization payments and post-retirement employee benefits, (7) extending the stay of proceedings, (8) amending the Wabush Initial Order accordingly* of the Wabush CCAA Parties dated May 29, 2015 (the **Wabush Comeback Motion**), which led to the Wabush Comeback Order (R-5), is also communicated herewith for ease of reference as **Exhibit R-6**;
16. By way of judgment dated June 26, 2015, the Court rendered Orders with respect to the priority of the Interim Lender Charge and the suspension of payment of monthly and annual lump sum "catch-up" payments (the **Pension Priority and Suspension Order**), as follows:

[143] [...] **CONFIRMS** the priority of the Interim Lender Charge over deemed trusts, as set out in paragraph 47 of the Wabush Initial Order, as amended on June 9, 2015;

[144] ORDERS the suspension of payment by the Wabush CCAA Parties of the monthly amortization payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, nunc pro tunc to the Wabush Filing Date;

[145] ORDERS the suspension of payment by the Wabush CCAA parties of the annual lump sum "catch-up" payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, nunc pro tunc to the Wabush Filing Date; [Emphasis added.]

the whole as it appears from the Pension Priority and Suspension Order, a copy of which is communicated herewith as **Exhibit R-7**;

17. Motion for leave to appeal the Pension Priority and Suspension Order (R-7) was dismissed by the Court of Appeal on August 18, 2015, as appears from the judgment of the Honourable Nicholas Kasirer, J.C.A., a copy of which is communicated herewith as **Exhibit R-8**;

18. On February 1, 2016, the Court issued Approval and Vesting Orders with respect to:
- a) An Asset Purchase Agreement dated as of December 23, 2015, a copy of which is communicated herewith as **Exhibit R-9**, whereby CQIM, Wabush Resources, Wabush Iron and Arnaud Railway (collectively, the **Port Vendors**) agreed to sell to Investissement Québec (together with Société ferroviaire et portuaire de Pointe-Noire s.e.c., its subsequent assignee pursuant to an agreement dated January 29, 2016, the **Port Purchaser**), substantially all of the assets, with the exception of certain excluded assets, of the Port Vendors relating to the Pointe-Noire Plant, the port facility located in the Bay of Sept-Îles (the **Pointe-Noire Port Facility**), and the Arnaud railway (collectively, the **Port Assets**), the whole as appears from the Approval and Vesting Order dated February 1, 2016 issued with respect to the Port Assets (the **Port Approval and Vesting Order**), communicated herewith as **Exhibit R-10**;
 - b) An Asset Purchase Agreement dated as of January 26, 2016, a copy of which is communicated herewith as **Exhibit R-11**, whereby Wabush Resources and Wabush Iron (the **Block Z Vendors**) agreed to sell to Administration Portuaire de Sept-Îles / Sept-Îles Port Authority (the **Block Z Purchaser**), the immovable property known as "Block Z" located near the Pointe-Noire Port Facility, the whole as appears from the Approval and Vesting Order dated February 1, 2016 issued with respect to Block Z (the **Block Z Approval and Vesting Order**), communicated herewith as **Exhibit R-12**;

19. The Port Approval and Vesting Order (R-10) and the Block Z Approval and Vesting Order (R-12) provided for the vesting of the assets on a free and clear basis, with the net proceeds from both transactions to stand in "the place and stead" of the Port Assets and the Block Z, respectively:

ORDERS that for the purposes of determining the nature and priority of the Encumbrances, the balance of the Proceeds remaining following deduction for applicable Cure Costs (if any) and Transfer Taxes (if any is payable) that are remitted by the Monitor pursuant to Paragraph 10 of this Order (the "Net Proceeds") shall stand in the place and stead of the Purchased Assets, and that upon the Issuance of the Certificate, all Encumbrances except for the Permitted Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the Closing, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the Closing.

[Para. 21 of the Port Approval and Vesting Order and para. 19 of the Block Z Approval and Vesting Order. Emphasis added.]

20. The total outstanding amount owing to the Interim Lender under the Interim Financing Documents (as defined in the Port Approval and Vesting Order) was repaid by the Monitor using the proceeds of the sale of the Port Assets, as contemplated in the Port Approval and Vesting Order (R-10);

III. DEFINED BENEFIT PENSION PLANS AND CONTRIBUTIONS

A. Defined Benefit Pension Plans

21. Two of the Pensions Plans in place for the CCAA Parties' Employees contained defined benefit schemes:

- a) A hybrid pension plan for salaried employees at the Wabush Mine and the Pointe-Noire Port hired before January 1, 2013, known as the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited, registered with the Newfoundland & Labrador Superintendent of Pensions (the N&L Superintendent) under member 021314 and the Canada Revenue Agency under number 0343558, as amended and restated effective as of January 1, 1997, together with subsequent amendments thereto¹, communicated herewith as Exhibit R-23 (the Salaried DB Plan), which included both defined benefit and defined contribution components [...]; and
- b) A pension plan for unionized hourly employees at the Wabush Mine and the Pointe-Noire Port, known as the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company, [...] Wabush Lake Railway Company, Limited, registered with the Newfoundland & Labrador Superintendent of Pensions under number 024699, the Office of the Superintendent of Financial Institutions of Canada (OSFI) under number 57777, and the Canada Revenue Agency under number 0555201, as amended and restated effective as of March 1, 1996, together with subsequent amendments thereto², communicated herewith as Exhibit R-24 (the Union DB Plan, and together with the Salaried Pension Plan, the DB Plans);

both of which were administered by Wabush Mines (the **Plan Administrator**), until the DB Plans were terminated in December 2015. The Plan Administrator was subsequently replaced by Morneau Shepell Ltd. (the **Replacement Plan Administrator**), the whole as further detailed herein below;

22. [...]

23. [...]

24. On December 15, 2015, the Wabush CCAA Parties received two notices from the [...] N&L Superintendent announcing the termination, effective as of that date, of both DB Plans (the **N&L Termination Notices**), as appears from the copy of said notices, communicated herewith *en liasse* as **Exhibit R-13**;

¹ It would appear that the amendments were only received by the N&L Superintendent on July 30, 2015.

² It would appear that the amendments were only received by the N&L Superintendent on July 30, 2015.

25. In the N&L Termination Notice (R-13), the N&L Superintendent noted the following:
- a) The Wabush CCAA Parties had discontinued or were in the process of discontinuing all of their business operations within the meaning of Section 59(1)(b) PBA; and
 - b) The N&L Superintendent was of the opinion that the DB Plans had failed to meet the solvency requirements prescribed by the applicable regulations within the meaning of Section 59(1)(d) PBA;
26. Also on December 15, 2015, the Wabush CCAA Parties received a notice from [...] OSFI, declaring the termination, effective as of that date, of the Union DB Plan (the **OSFI Termination Notice**, and collectively with the N&L Termination Notices, the **Termination Notices**), as appears from a copy of the OSFI Termination Notice, communicated herewith as **Exhibit R-14**;
27. In the OSFI Termination Notice (R-14), OSFI noted the following:
- a) Special payments had been suspended in the CCAA Proceedings;
 - b) The Wabush Mine had been shut down and substantially all the Wabush CCAA Parties' employees had been terminated;
 - c) OSFI was of the opinion that the DB Plans had failed to meet the prescribed tests and standards for solvency under the PBSA;
 - d) There had been a cessation of crediting of benefits to plan members;
28. In the Termination Notices (R-13 and R-14), both OSFI and the N&L Superintendent indicated that the Wabush CCAA Parties were required to pay into the pension funds all amounts that would have been required to be paid to meet the prescribed solvency requirements, as well as the amounts necessary to fund the benefits provided for in the DB Plans. Both OSFI and the N&L Superintendent of Pensions also took the position that a deemed trust had arisen in respect of such amounts;
29. On March 30, 2016, upon written requests by the Wabush CCAA Parties, OSFI and the N&L Superintendent appointed the Replacement Pension Plan Administrator in respect to both DB Plans, as appears from the three notices received from OSFI and the N&L Superintendent, communicated herewith *en liasse* as **Exhibit R-15**;

B. Employer Contributions

(i) Normal Costs

30. The normal cost payments were made to the [...] DB Plans by the Wabush CCAA Parties based on the actuarial reports prepared by Towers Watson Canada Inc. (as it then was, now Willis Towers Watson, hereinafter **Towers Watson**) in its capacity as consultant to the Plan Administrator [...] prior to the appointment of the Replacement Pension Plan Administrator;

31. The normal cost payments with respect to the Salaried DB Plan were fully paid as of the Wabush Initial Order, and were in fact overpaid in the amount of \$169,961 as of December 15, 2015, the date of the termination of the Salaried DB Plan, as appears from the summary table with respect to the Salaried DB Plan prepared by the Replacement Pension Plan Administrator (the **Salaried DB Plan Summary**), a copy of which is communicated herewith as **Exhibit R-16**;
32. The normal cost payments with respect to the Union DB Plan were fully paid as of the Wabush Initial Order and continued to be paid up until December 15, 2015, the date of the termination of the Union DB Plan, (including a payment of \$ 22,893 for December 2015 being the amount for the month prorated to the Union DB Plan termination date), as appears from the summary table with respect to the Union DB Plan prepared by the Replacement Pension Plan Administrator (the **Union DB Plan Summary**), communicated herewith as **Exhibit R-17**. It is noted that the Salaried DB Plan Summary and the Union DB Plan Summary appear to have rounding errors in the some of the totals shown thereon;

(ii) **Special Payments**

33. As appears from Section 2 of the Salaried DB Plan Summary (R-16):
 - a) The special payments with respect to the Salaried DB Plan required to be paid prior to the date of the Wabush Initial Order were paid in full except for \$3;
 - b) One special payment in the amount of \$273,218 was paid after the date of the Wabush Initial Order and before the granting of the Pension Priority and Suspension Order (R-7), which payment constituted an underpayment of \$1;
 - c) The special payments required to be paid after the date of the Pension Priority and Suspension Order (R-7) , and which, in conformity with the Pension Priority and Suspension Order (R-7), were not paid, amount to \$ 2,185,752;

the whole based on a Towers Watson actuarial report dated September 12, 2014 for actuarial valuation as at January 1, 2014;

34. As appears from Section 2 of the Union DB Plan Summary (R-17):
 - a) The special payments with respect to the Union DB Plan required to be paid prior to the date of the Wabush Initial Order were underpaid in the amount of \$146,776;
 - b) One special payment in the amount of \$393,337 was paid after the date of the Wabush Initial Order and before the granting of the Pension Priority and Suspension Order (R-7), which payment constituted an overpayment of \$16,308;
 - c) The special payments required to be paid after the date of the Pension Priority and Suspension Order (R-7), and which, in conformity with the Pension Priority and Suspension Order (R-7), were not paid, amount to \$3,016,232;

the whole based on a Towers Watson actuarial report dated September 12, 2014 for actuarial valuation as at January 1, 2014;

(iii) **Catch-Up Special Payments**

35. In the Wabush Comeback Motion (R-6), the Wabush CCAA Parties indicated that lump sum "catch up" special payments (each, a **Catch-Up Payment**) were estimated to be approximately \$5.5 million for both DB Plans and would become payable as of July 2015 (at paragraph 88);
36. Subsequently, the Wabush CCAA Parties determined that no such Catch-Up Payment was due in respect of the Salaried DB Plan;
37. The Catch-Up Payment in respect of the Union DB Plan for its part was revised and estimated to be approximately \$1.9 million;
38. In fact, pursuant to a Towers Watson actuarial report dated July 1, 2015 for an actuarial valuation as of January 1, 2015, which only became available after the issuance of the Wabush Initial Order, additional special payments in the aggregate amount of \$3,525,120 were required with respect to the Union DB Plan, as appears from the Union DB Plan Summary (R-17);
39. As also appears from Section 3 thereof (R-17), these additional special payments with respect to the Union DB Plan were payable by way of a Catch-Up Payment of \$1,762,560 due August 26, 2015, and thereafter in additional special payments payable in six monthly instalments of \$293,760 starting August 30, 2015;
40. None of these monthly additional special payments were paid or kept separate and apart from their own moneys by the Wabush CCAA Parties, nor was any Catch-Up Payment made (or kept separate and apart by the Wabush CCAA Parties from their own moneys) with respect to the Union DB Plan, the whole as contemplated and authorized by the Pension Priority and Suspension Order (R-7);

(iv) **Wind-Up Deficiencies**

41. In the Wabush Comeback Motion (at paragraph 83), based on estimates received from Towers Watson, the Wabush CCAA Parties estimated the wind-up deficits to be approximately \$18.2 million for the Salaried DB Plan and \$23.3 million for the Union DB Plan;
42. [...] The Replacement Pension Plan Administrator [...] later informed the Monitor that it [...] expected the wind-up deficits as at December 16, 2015, to be approximately \$26.7 million for the Salaried DB Plan and \$27.7 million for the Union DB Plan;
- 42.1 In December 2016, Morneau Shepell filed a report titled "Wind-Up Actual Valuation as at December 16, 2015" in respect of the Salaried DB Plan (the Salaried DB Plan Wind-Up Report), a copy of which is communicated herewith as Exhibit R-25;
- 42.2 Based on the Salaried DB Plan Wind-Up Report (R-25), the financial position of the Salaried DB Plan as of December 16, 2015 presented a wind-up deficit of \$27.45 million, as appears from page 3 thereof;

- 42.3 On December 14, 2016, Towers Watson filed a report titled "Plan Termination as at December 16, 2015" in respect of the Union DB Plan (the **Union DB Plan Wind-Up Report** and together with the Salaried DB Plan Wind-Up Report, the **Wind-Up Reports**)³, a copy of which is communicated herewith as **Exhibit R-26**;
- 42.4 Based on the Union DB Plan Wind-Up Report (R-26), the financial position of the Union DB Plan as of December 16, 2015 presented a wind-up deficit of \$27,486,548, as appears from pages 8 and 9 thereof. This calculation does not account for the benefits covered by Section 17 PBSA, which is qualified as "Priority no. 2" ranking after the wind-up deficit and would represent an additional wind-up liability of \$2,349,912, as appears from pages 4 and 10 of the Union DB Plan Wind-Up Report;

(v) **Summary of Amounts Owing**

43. In summary and based on the foregoing, the amounts owing to the [...] DB Plans based on payment due date are as follows:

	Salaried DB Plan	Union DB Plan
Normal Cost Payments		
Pre-filing	\$0	\$0
Post-Filing	\$0	\$0
Total	\$0	\$0
Special Payments		
Pre-filing	\$3	\$146,776
Post-Filing	\$2,185,753	\$2,999,924
Total	\$2,185,756	\$3,146,700
Catch-up Special Payments		
Pre-filing	\$0	\$0
Post-Filing	\$0	\$3,525,120
Total	\$0	\$3,525,120
[...] Wind-Up Deficits	\$27,450,000	\$27,486,548⁴

³ Both Wind-up Reports remain subject to review and approval by the pension regulators.

⁴ Excluding the additional wind-up deficit in the amount of \$ 2,349,912 (see para. 42.4 above).

IV. PENSION CLAIMS

44. The Claims Procedure Order (R-2) provides for specific procedures with respect to Pension Claims, as follows:

[32] ORDERS that the Plan Administrator will have the sole authority to file Proofs of Claim with respect to any and all Pension Claims.

[32.1] ORDERS that the Monitor shall provide to the Pension Regulator and the Representatives' Counsel a copy of each Proof of Claim filed in respect of the Salaried Pension Plan and details of any determination by the Monitor of a Pension Claim in respect of the Salaried Pension Plan.

[32.2] ORDERS that the Monitor shall provide to the Pension Regulator and the USW a copy of each Proof of Claim filed in respect of the Union Pension Plan and details of any determination by the Monitor of a Pension Claim in respect of the Union Pension Plan.

[...]

[38.1] ORDERS that the Pension Regulator and the Representatives' Counsel may file a Notice of Dispute with respect to any determination by the Monitor of a Pension Claim in respect of the Salaried Pension Plan, including for the purpose of asserting any trust claims in respect of the Salaried Pension Plan, and if no Notice of Dispute is filed within fourteen (14) days of the date of receipt of the Monitor's notice of its determination of a Pension Claim in respect of the Salaried Pension Plan such determination shall be deemed to be the Allowed Claim. If a Notice of Dispute is filed by the Pension Regulator or the Representatives' Counsel within the time specified herein, paragraphs 37 and 46 to 51 hereof shall apply *mutatis mutandi*.

[38.2] ORDERS that the Pension Regulator and the USW may file a Notice of Dispute with respect to any determination by the Monitor of a Pension Claim in respect of the Union Pension Plan, including for the purpose of asserting any trust claims in respect of the Union Pension Plan, and if no Notice of Dispute is filed within fourteen (14) days of the date of receipt of the Monitor's notice of its determination of a Pension Claim in respect of the Union Pension Plan such determination shall be deemed to be the Allowed Claim. If a Notice of Dispute is filed by the Pension Regulator or the USW within the time specified herein, paragraphs 37 and 46 to 51 hereof shall apply *mutatis mutandi*.

[38.3] ORDERS that the Pension Regulator and the Representatives' Counsel shall be given written notice by the Monitor of, and are entitled to participate in (i) any hearing before a Claims Officer concerning a Pension Claim in respect of the Salaried Pension Plan and (ii) any hearing before the Court concerning a Pension Claim in respect of the Salaried Pension Plan.

[38.4] ORDERS that the Pension Regulator and the USW shall be given written notice by the Monitor of, and are entitled to participate in (i) any hearing before a Claims Officer concerning a Pension Claim in respect of the Union Pension Plan and (ii) any hearing before the Court concerning a Pension Claim in respect of the Union Pension Plan. [Emphasis added]

45. On December 18, 2015, the Plan Administrator filed, in accordance with the Claims Procedure Order (R-2), Proofs of Claim with respect to each of the DB Plans, as follows:
- a) With respect to the Salaried DB Plan, (i) a secured Claim in the amount of \$24,000,000 against Wabush Mines, Arnaud Railway and Wabush Railway (for

the wind-up deficit), and (ii) a Restructuring Claim in the amount of \$1,932,940 against Wabush Mines, Arnaud Railway and Wabush Railway (for unpaid special payments), the whole as appears from said Proof of Claim (in the amount finally determined in accordance with the Claims Procedure Order, the **Salaried DB Plan Claim**), a copy of which is communicated herewith as **Exhibit R-18**; and

- b) With respect to the Union DB Plan, (i) a secured Claim in the amount of \$29,000,000 against Wabush Mines, Arnaud Railway and Wabush Railway (for the wind-up deficit), and (ii) a Restructuring Claim in the amount of \$6,059,238 against Wabush Mines, Arnaud Railway and Wabush Railway (for unpaid special payments), the whole as appears from said Proof of Claim (in the amount finally determined in accordance with the Claims Procedure Order, the **Union DB Plan Claim**), a copy of which is communicated herewith as **Exhibit R-19**;

V. APPLICABLE STATUTORY REGIME

46. [...]

46.1 As noted above, the DB Plans are registered with OSFI and/or the N&L Superintendent:

46.2 The PBSA applies to pension plans providing benefits to employees and retirees employed in "included employment", which in turn is defined as work, undertaking of business that falls within the legislative authority of the Parliament of Canada, including navigation and shipping and extra-provincial railways, the whole as provided for in Section 4 PBSA:

4 (1) This Act applies in respect of pension plans.

(2) In this Act, pension plan means a superannuation or other plan organized and administered to provide pension benefits to employees employed in included employment (and former employees) and to which the employer is required under or in accordance with the plan to contribute [...]

(4) In this Act, included employment means employment, other than excepted employment, on or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada, including, without restricting the generality of the foregoing,

(a) any work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of a ship and transportation by ship anywhere in Canada;

(b) any railway, canal, telegraph or other work or undertaking connecting a province with another province or extending beyond the limits of a province [...]

(6) The Governor in Council may make regulations excepting from included employment [...]

(b) any other employment if the Governor in Council, on a report of the Minister, is satisfied that

(i) provision has been made for the coverage of employees employed in that employment under the terms of a pension plan that is organized and administered for the benefit primarily of employees employed in other than included employment and that is required to be registered under the law of a designated province [...] [Emphasis added.]

- 46.3 No regulation exempting the DB Plans from the application of the PBA were adopted pursuant to Subsection 4(6)(b) above;
- 46.4 The PBA applies to pension plans for persons employed in Newfoundland & Labrador, except those to which an Act of the Parliament of Canada applies, as provided for in Section 5 PBA:
5. This Act applies to all pension plans for persons employed in the province [of Newfoundland & Labrador], except those pension plans to which an Act of the Parliament of Canada applies.
- 46.5 Subsection 2(ee) PBA defines "province of employment" as "the province where an employee reports for work, but if the employee is not required to report for work, the province where an employer's establishment is located from which an employee's remuneration is paid";
- 46.6 The SPPA applies to pension plans provided for employees who report for work at an establishment of their employer located in Québec, as provided for in Section 1 thereof:
1. This Act applies to pension plans provided
- (1) for employees who report for work at an establishment of their employer located in Québec or, if not, who receive their remuneration from such an establishment, provided, in the latter case, they do not report for work at any other establishment of their employer;
- (2) for employees not referred to in paragraph 1 who, while residing in Québec and being employed by an employer whose main establishment is located in Québec, work outside Québec, provided the plans are not governed by an Act of a legislative body other than the Parliament of Québec which provides for a deferred pension.
- 46.7 The Salaried DB Plan is comprised of 656 members, approximately half of which were employed in the province of Québec, with the other half in Newfoundland & Labrador⁵;
- 46.8 The Union DB Plan is comprised of 1732 members, the majority of which are in the province of Newfoundland & Labrador;
- 46.9 Following the termination of the Salaried DB Plan, 14 of its members were found to be subject to federal legislation as a result of the nature of their functions, as explained at page 4 of the Salaried DB Plan Wind-Up Report (R-25)⁶;
- 46.10 As for the Union DB Plan, it would appear that 55 of its 1732 members are governed by federal jurisdiction as a result of the nature of their functions;
- 46.11 Based on the foregoing and the information found in the Wind-Up Reports (R-25 and R-26), the members of both DB Plans appear to be subject to the following jurisdictions:

⁵ As noted in Appendix C of the Salaried DB Plan Wind-Up Report (R-25, at page 19), the membership data is currently under review and remains subject to change.

⁶ See note 3 above with respect to membership data.

	Salaried DB Plan ⁷	Union DB Plan	TOTAL
Newfoundland & Labrador PBA	313	1005	1318
Québec SPPA	329	661	990
Federal PBSA	14	66	80
TOTAL	656	1732	2388

46.12 Sections 6.1 PBSA, 8(2) PBA and 249 SPPA each provide for the entering into of multilateral agreements as between the federal government and that of provinces with a view to determine, *inter alia*, the legislative regime applicable to multi-jurisdictional pension plans;

V.1 DEEMED TRUSTS

46.13 The PBSA, the PBA and the SPPA all include provisions with respect to deemed trusts applicable under certain circumstances with respect to unpaid pension contributions;

A. PBSA

47. Section 8(1) of the PBSA requires an employer to segregate funds from its own moneys, including for certain types of payments owing to the pension fund, and further provides that a trust is deemed to have arisen with respect to said funds for the benefit of the pension members:

8 (1) An employer shall ensure, with respect to its pension plan, that the following amounts are kept separate and apart from the employer's own moneys, and the employer is deemed to hold the amounts referred to in paragraphs (a) to (c) in trust for members of the pension plan, former members, and any other persons entitled to pension benefits under the plan:

(a) the moneys in the pension fund,

(b) an amount equal to the aggregate of the following payments that have accrued to date:

(i) the prescribed payments, and

(ii) the payments that are required to be made under a workout agreement; and

(c) all of the following amounts that have not been remitted to the pension fund:

(i) amounts deducted by the employer from members' remuneration, and

(ii) other amounts due to the pension fund from the employer, including any amounts that are required to be paid under subsection 9.14(2) or 29(6).

[Emphasis added.]

⁷ See note 3 above with respect to membership data.

48. Section 8(2) PBSA provides that the amounts deemed to be held in trust pursuant to Section 8(1) shall not form part of the estate of the employer upon in the event of its liquidation, assignment or bankruptcy:

(2) In the event of any liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that by subsection (1) is deemed to be held in trust shall be deemed to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own moneys or from the assets of the estate.

[Emphasis added.]

49. Section 29 PBSA permits OSFI to declare the whole or part of a pension plan terminated in certain circumstances, and further provides for payments by the employer into the pension fund upon termination:

29 [...] (2) The Superintendent may declare the whole or part of a pension plan terminated where

(a) there is any suspension or cessation of employer contributions in respect of all or part of the plan members;

(b) the employer has discontinued or is in the process of discontinuing all of its business operations or a part thereof in which a substantial portion of its employees who are members of the pension plan are employed; or

(c) the Superintendent is of the opinion that the pension plan has failed to meet the prescribed tests and standards for solvency in respect of funding referred to in subsection 9(1).

(2.1) The Superintendent may also declare the whole of a pension plan terminated if there is a cessation of crediting of benefits to the plan members.

(3) In a declaration made under subsection (2) or (2.1), the Superintendent shall declare a pension plan or part of a pension plan, as the case may be, to be terminated as of the date that the Superintendent considers appropriate in the circumstances.

[...]

(6) If the whole of a pension plan is terminated, the employer shall, without delay, pay into the pension fund all amounts that would otherwise have been required to be paid to meet the prescribed tests and standards for solvency referred to in subsection 9(1) and, without limiting the generality of the foregoing, the employer shall pay into the pension fund

(a) an amount equal to the normal cost that has accrued to the date of the termination;

(b) the amounts of any prescribed special payments that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;

(c) the amounts of payments that are required to be made under a workout agreement that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;

(d) all of the following amounts that have not been remitted to the pension fund

at the date of the termination:

- (i) the amounts deducted by the employer from members' remuneration, and
 - (ii) other amounts due to the pension fund from the employer; and
- (e) the amounts of all of the payments that are required to be made under subsection 9.14(2).

[...]

(6.4) On the winding-up of the pension plan or the liquidation, assignment or bankruptcy of the employer, the amount required to permit the plan to satisfy any obligations with respect to pension benefits as they are determined on the date of termination is payable immediately.

(6.5) Subsection 8(1) does not apply in respect of the amount that the employer is required to pay into the pension fund under subsection (6.4). However, it applies in respect of any payments that have accrued before the date of the winding-up, liquidation, assignment or bankruptcy and that have not been remitted to the fund in accordance with the regulations made for the purposes of subsection (6.1). [...]

B. PBA

50. The PBA contains similar provisions to those described above in respect of the PBSA. Section 32 PBA deems a trust to come into existence under certain circumstances:

32 (1) An employer or a participating employer in a multi-employer plan shall ensure, with respect to a pension plan, that

- (a) the money in the pension fund;
- (b) an amount equal to the aggregate of
 - (i) the normal actuarial cost, and
 - (ii) any special payments prescribed by the regulations, that have accrued to date; and

(c) all

- (i) amounts deducted by the employer from the member's remuneration, and
- (ii) other amounts due under the plan from the employer that have not been remitted to the pension fund are kept separate and apart from the employer's own money, and shall be considered to hold the amounts referred to in paragraphs (a) to (c) in trust for members, former members, and other persons with an entitlement under the plan.

(2) In the event of a liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that under subsection (1) is considered to be held in trust shall be considered to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own money or from the assets of the estate.

(3) Where a pension plan is terminated in whole or in part, an employer who is required to pay contributions to the pension fund shall hold in trust for the member or former member or other person with an entitlement under the plan an amount of money equal to employer contributions due under the plan to the date of termination.

(4) An administrator of a pension plan has a lien and charge on the assets of the employer in an amount equal to the amount required to be held in trust

under subsections (1) and (3).

51. Sections 59 PBA sets out the circumstances in which the N&L Superintendent may declare a plan to be terminated;

59 (1) The superintendent may declare the whole or part of a pension plan terminated where

(a) there is a suspension or cessation of employer contributions in respect of all or part of the plan membership, except where surplus is used to meet funding requirements;

(b) the employer has discontinued or is in the process of discontinuing all of its business operation or a part in which a substantial portion of its employees who are members of the plan are employed;

(c) the employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada);

(d) the superintendent is of the opinion that the plan has failed to meet the requirements prescribed by the regulations for solvency in respect of funding; or

(e) all or part of the business or assets of a predecessor employer's business are sold, assigned or otherwise disposed of and the successor employer who acquired the business or assets does not provide a pension plan for the members of the predecessor employer's plan who become employees of the successor employer.

(2) A declaration made under subsection (1) shall declare the whole or part of a pension plan to be terminated as of a date determined by the superintendent.

52. The wind-up of a pension plan commences immediately after the termination of the plan unless the N&L Superintendent postpones the wind-up by giving written approval, pursuant to Section 60(3) PBA;

53. Section 61 PBA provides for certain termination payments as follows:

61 (1) On termination of a pension plan, the employer shall pay into the pension fund all amounts that would otherwise have been required to be paid to meet the requirements prescribed by the regulations for solvency, including

(a) an amount equal to the aggregate of

(i) the normal actuarial cost, and

(ii) special payments prescribed by the regulations,

that have accrued to the date of termination; and

(b) all

(i) amounts deducted by the employer from members' remuneration, and

(ii) other amounts due to the pension fund from the employer

that have not been remitted to the pension fund at the date of termination.

(2) Where, on the termination, after April 1, 2008, of a pension plan, other than a multi-employer pension plan, the assets in the pension fund are less than the value of the benefits provided under the plan, the employer shall, as prescribed by the regulations, make the payments into the pension fund, in addition to the payments required under subsection (1), that are necessary to fund the benefits provided under the plan.

C. SPPA

53.1 The only deemed trust provided for under the SPPA is that found in Section 49 thereof with respect to unpaid contributions and accrued interest:

49. Until contributions and accrued interest are paid into the pension fund or to the insurer, they are deemed to be held in trust by the employer, whether or not the latter has kept them separate from his property.

53.2 In addition, Section 264 SPPA provides that contributions payable into the pension fund are unassignable and unseizable:

264. Unless otherwise provided by law, the following amounts or contributions are unassignable and unseizable:

(1) all contributions paid or payable into the pension fund or to the insurer, with accrued interest: [...]

53.3 With respect to the employer's obligations upon termination of a pension plan, Sections 228-230 SPPA provides:

§4 - Debts of the employer

228. The amount to be funded to ensure full payment of the benefits of the members or beneficiaries affected by the withdrawal of an employer from a multi-employer pension plan or the termination of a pension plan shall constitute a debt of the employer. The amount to be funded shall be established at the date of termination.

If, at the date of termination, the employer has failed to pay contributions into the pension fund or to the insurer, as the case may be, the debt shall be the amount by which the amount to be funded exceeds such contributions. [...]

229. Any amount owed by an employer under section 228 must, upon its determination, be paid into the pension fund or to the insurer, as the case may be. However, Retraite Québec may, on the conditions it determines, allow any employer to spread the payment of such amount over a period of not more than five years.

Any amount not paid into the pension fund or to the insurer shall bear interest from the date of default, at the rate determined pursuant to section 61 that was applicable at the date of termination.

230. Any amount paid by an employer under this subdivision, including any amount recovered after the date of termination, particularly in respect of contributions outstanding and unpaid at the date of termination, shall be applied to the payment of benefits of members or beneficiaries in the order of priority established under this Act.

such that the termination deficit, if any, is a debt of the employer and not a "contribution" subject to a deemed trust;

D. SUMMARY OF AVAILABLE DEEMED TRUSTS

54. The [...] PBSA and PBA provisions set out above provide for two types of deemed trust:
- (1) a trust that is deemed to exist while the employer continues in business and that covers amounts that the employer is required to keep separate and apart from its own moneys (Sections 8(1) PBSA and 32(1) PBA, hereinafter referred to as **limited deemed trusts**); and
- (2) a trust that arises in the event of any liquidation, assignment or bankruptcy of an employer and that covers amounts that the employer is required to keep separate and apart from its own moneys, whether or not the amounts have in fact been kept separate and apart from the employer's own moneys or assets (Sections 8(2) PBSA and 32(2) PBA, hereinafter referred to as **liquidation deemed trusts**);
55. In the case at hand, OSFI and the N&L Superintendent issued the Termination Notices (R-13 and R-14) with respect to the DB Plans after the CCAA Proceedings had commenced;

V.2 MULTI-JURISDICTIONAL AGREEMENTS AND CONFLICT OF LAWS

56. While the assets of the Wabush CCAA Parties have not been fully realized to date, the Court may need to consider whether any eventual shortfall between the sale proceeds of the Wabush CCAA Parties' assets in Newfoundland and the amounts potentially duly secured by a pension deemed trust created under the PBA could possibly extend to the sale proceeds of the Wabush CCAA Parties' assets formerly located in Quebec;
57. Should it determine that the amounts potentially duly secured by a pension deemed trust created under the PBA exceed the value of sale proceeds generated from assets located in Newfoundland, this Court will need to consider applicable conflict rules so as to determine whether the applicable pension deemed trust under the PBA could extend to the sale proceeds of assets formally located in Quebec;
58. Under the general conflict rules in Quebec, real rights and by extension priority disputes over property are governed by the laws where the property is located, subject to an exception for property in transit (3097 C.c.Q.);
59. The Province of Quebec is also party to certain multi-jurisdictional agreements in relation to pension matters that may provide in certain circumstances for the application of laws of another jurisdiction by way of incorporation where the Quebec government has agreed to do so and its supervisory authority has delegated its authority to the supervisory authority of another jurisdiction;
60. In 2011, the Canadian Association of Pension Supervisory Authorities (**CAPSA**) developed an Agreement Respecting Multi-Jurisdictional Pension Plans (the **2011 Agreement**), which was adopted by the Provinces of Ontario and Quebec, a copy of which is communicated herewith as **Exhibit R-20**;

61. CAPSA also developed in 2016 a revised version thereof (the **2016 Agreement**), which was adopted by the Provinces of British Columbia, Nova Scotia, Ontario, Quebec and Saskatchewan, a copy of which is communicated herewith as **Exhibit R-21**;

62. These 2011 and 2016 Agreements (R-20 and R-21) provide *inter alia* that:

6 (1) While a pension supervisory authority is the major authority for a pension plan in accordance with this Agreement:

(a) the provisions of the pension legislation of the major authority's jurisdiction in respect of matters referred to in Schedule B¹ apply to the plan instead of those of the corresponding provisions of the pension legislation of any minor authority's jurisdiction that would apply to the plan if this Agreement did not exist; and

(b) subject to the provisions of this Agreement, the provisions of the pension legislation of each jurisdiction that are applicable to the plan under the terms of such legislation apply to the plan in respect of matters not referred to in Schedule B.¹

¹ Schedule B states: "8. Legislative provisions respecting: [...] (c) requirements that the pension fund be held separate and apart from the employer's assets and deeming the pension fund to be held in trust for the active members or other persons; (d) an administrator's lien and charge on the employer's assets equal to the amounts deemed held in trust [...]".

63. However, Newfoundland & Labrador is not a party to the 2011 and 2016 Agreements (R-20 and R-21);

64. The only applicable multi-jurisdictional agreement between the governments of Quebec and Newfoundland & Labrador is a Memorandum of Agreement⁸, to which the government of Newfoundland & Labrador became a party in 1986, communicated herewith as **Exhibit R-22**;

65. The Memorandum of Agreement (R-22) does not provide for the incorporation and application of legislative provisions and administrative powers by the participating pension supervisory authorities, but merely provides for a certain delegation of powers as follows:

2. The major authority¹ for each plan shall exercise both its own statutory functions and powers and the statutory functions and powers of each minor authority for such plan.

[...]

9. Where a major authority is unable to exercise a particular power of enforcement available to one of the minor authorities, it shall so advise that minor authority.

¹ According to the Memorandum of Agreement (R-22), "major authority" means, with respect to a plan, the participating authority of the province where the plurality of the plan members are employed, excluding members employed in a province not having a participating authority.

⁸ The Memorandum of Agreement (R-22) remains effective, as provided by Section 284 SPPA.

66. As such, the Memorandum of Agreement (R-22) could not serve as the basis for the application of the PBA in relation to property located in Quebec;
67. In view of the foregoing and absent a multi-jurisdictional agreement providing for the application in Quebec of the laws of Newfoundland & Labrador, it is submitted that this Court is bound to apply the laws applicable in the Province of Quebec to adjudicate a dispute with respect to tangible assets located in Québec (or the proceeds standing in their stead);
68. The Monitor notes Article 3079 of the *Civil Code of Québec*:

3079. Where legitimate and manifestly preponderant interests so require, effect may be given to a mandatory provision of the law of another State with which the situation is closely connected.

In deciding whether to do so, consideration is given to the purpose of the provision and the consequences of its application.

but is of the view that this exception is not applicable in the circumstances as the possible application of the PBA could have been properly achieved by way of a multi-jurisdictional agreement and absent the execution of the 2011 and 2016 Agreements (R-20 and R-21) by Newfoundland & Labrador it could not justify why its legislation should override Quebec law in the present circumstances, including Articles 2644 and 2647 C.c.Q.;

VI. DIRECTIONS WITH RESPECT TO PENSION CLAIMS

69. Based on its review of the relevant statutes and applicable case-law, the Monitor is of the view that:
 - a) Unpaid and accrued normal costs or special costs owing at the date of the Wabush Initial Order would be subject to a limited deemed trust pursuant to subsections 8(1) of the PBSA and 32(1) of the PBA;
 - b) A liquidation deemed trust did not arise prior to or since the Wabush Initial Order pursuant to subsections 8(2) PBSA or 32(2) PBA, as none of the applicable triggering events, including a "liquidation", have occurred, either before or since the date of the Wabush Initial Order;
 - c) In any event, any liquidation deemed trust triggered after the Wabush Initial Order with respect to unpaid amortization payments as a result of a "liquidation" would be ineffective given the terms of the Wabush Initial Order and applicable stay thereunder, the terms of the Pension Priority and Suspension Order, the fact that the special costs were assessed on the basis of a deficit which existed as of the Wabush Initial Order and were calculated for past services rendered as of a pre-filing reference date, the treatment of special costs under the CCAA generally, and legislative choices made with respect to same;
 - d) As a matter of statutory interpretation of the applicable pension legislation alone, the full amount of the wind-up deficit of the DB Plans would not be subject to a pension deemed trust pursuant to the PBSA or the PBA;

- e) Even if the wind-up deficits of the DB Plans were to be subject to a pension deemed trust pursuant to the terms of PBSA or the PBA, such deemed trust would be ineffective considering the Wabush Initial Order and applicable stay thereunder, the pre-filing nature of deficits of the DB Plans even if crystallized post-filing upon termination of the DB Plans, the treatment of pension deficits under the CCAA and legislative choices made with respect to same;
 - f) Even if the deemed trusts under the PBA were to cover assets located outside of Newfoundland & Labrador, this Court should not recognize and enforce it to the extent applicable the PBA deemed trust against assets located in this Province or the sale proceeds thereof;
70. The Monitor accordingly seeks an Order determining the priority of the various components of the Salaried DB Plan Claim (R-18) and the Union DB Plan Claim (R-19) to be as follows:
- a) normal costs and special payments outstanding as at the date of the Wabush Initial Order to be subject to a limited deemed trust;
 - b) normal costs and special payments payable after the date of the Wabush Initial Order, including additional special payments and Catch Up Payments established on the basis of actuarial reports issued after the Wabush Initial Order to constitute an unsecured Claim;
 - c) wind-up deficiency to constitute an unsecured Claim;
 - d) any trust created pursuant to the PBA may only charge property located in Newfoundland & Labrador;
71. Pursuant to paragraphs 38.1 and following of the Claims Procedure Order (R-2), reproduced above, the Pension Regulators, Representatives' Counsel and well as USW are all entitled to challenge the adjudication of Pension Claims by the Monitor;
72. The Monitor fully expects that various other stakeholders will have an interest in the determination of these priority issues;
73. The Monitor submits that it is proper to seek and obtain directions at this stage in respect of questions outlined above. [...] The amounts and the membership data included herein, including the wind-up deficits, are based on the information appearing in the Wind-Up Reports and are provided solely as information, as it is not necessary to know the actual quantum of the Pension Claims in order to determine their relative priority in these CCAA Proceedings;
74. In any event, should a dispute over the quantum of the wind-up deficits or any other factual information affecting the quantum of the Pension Claims arise, that issue could easily (and efficiently) be bifurcated and resolved independently from the directions sought herein;
75. The Monitor further submits that any proposed distribution of proceeds to creditors, including the choice of the mechanism to effect same, will be impacted by the issues set out herein above;

76. Based on the foregoing, the Monitor hereby submits that the Court will need to deal with the following questions:

Liquidation giving rise to a liquidation deemed trust

- a) What is the proper meaning of "liquidation" pursuant to subsections 8(2) PBSA and 32(2) PBA?
- b) Did a "liquidation" within the meaning of subsections 8(2) PBSA and 32(2) PBA occur prior or since the Wabush Initial Order?
- c) Would such a liquidation deemed trust (...) be effective if triggered by a "liquidation" occurring after the Wabush Initial Order?

Deficit upon termination

- d) Absent CCAA or BIA proceedings with respect to an employer, could the full amount of the deficit upon termination of a defined benefit pension plan be subject to a deemed trust pursuant to either of the PBSA or the PBA?
- e) Would such a wind-up deficit deemed trust be effective if triggered by a termination occurring after the Wabush Initial Order?

Enforcement or recognition of a PBA deemed trust charging assets located in Québec

- f) Is the deemed trust arising under the PBA specifically or implicitly limited to assets of the employer located in Newfoundland & Labrador?
- g) Could this Court nonetheless recognize and enforce a PBA deemed trust against assets located in this Province (or the sale proceeds standing in their stead)?

VII. CONCLUSIONS AND PROCEDURAL MATTERS

77. The Monitor submits that the notices given of the presentation of the present Amended Motion, the initial iteration of which was originally notified to all Persons on the Service List on September 20, 2016, are proper and sufficient;
78. Pursuant to paragraph 56 of the Wabush Initial Order (R-1), all motions in these CCAA Proceedings are to be brought on no less than ten (10) calendar days' notice to all Persons on the Service List;
- 78.1 Following discussions amongst the Monitor and various interested parties, the Motion was first made returnable on a pro forma basis on October 28, 2016;
- 78.2 Prior to the October 28, 2016 hearing, the following Notices of Objection were filed:
- a) Notice of Objection dated October 7, 2016 filed by the USW;
 - b) Notice of Objection dated October 7, 2016 filed by the Representatives; and
 - c) Notice of Objection dated October 7, 2016 filed by the Replacement Plan Administrator;
- the whole as appears from the Court record;

79. [...] Both before and after the October 28, 2016, the Monitor has made efforts in order [...] to agree to a timetable for the filing of materials and the presentation of the Motion with the CCAA Parties, Representative Counsel, the USW, the Replacement Plan Administrator and the relevant regulators that would allow relevant parties sufficient opportunity to respond and ensure the efficient hearing of the present Motion [...];
- 79.1 The N&L Superintendent went on to file a Notice of Objection on December 15, 2016, as appears from the Court record. While they have not filed a formal Notice of Objection, the Monitor also understands that OSFI and ReTraite Québec intend to take position with respect to the issues raised in the Motion;
- 79.2 A hearing was held on December 20, 2016 to debate the preliminary issues raised in the Notices of Objection, mainly the jurisdictional argument raised by the Representatives as to whether the Court should refer parts or all of the questions arising in the Motion to the Supreme Court of Newfoundland & Labrador;
- 79.3 On January 30, 2017, the Court issued a ruling whereby it determined that it had jurisdiction to deal with all issues stemming from this Motion, including the interpretation of the PBA in the context of the CCAA Proceedings and therefore refused to refer the matter to the Supreme Court of Newfoundland & Labrador;
- 79.4 During a case management hearing held on April 5, 2017, hearing dates on the merits were set (June 28 and 29, 2017), with the Court reserving the right of all parties to submit their position concerning the legal issues this Court needed or ought to rule on to resolve the issues raised by the present Motion;
- 79.5 The service of the present Amended Motion serves as notice pursuant to [...] paragraph 56 of the Wabush Initial Order (R-1);
80. [...];
81. The CCAA Parties have been consulted by the Monitor and support the conclusions sought herein;
82. The present Motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Amended Motion;

ISSUE an Order [...] determining the various priority disputes and issues raised by the present Amended Motion;

WITHOUT COST, save and except in case of contestation.

Montréal, April 13, 2017

Norton Rose Fulbright Canada LLP

NORTON ROSE FULBRIGHT CANADA, LLP
Mtre Sylvain Rigaud and Mtre Chrystal Ashby
Attorneys of the Monitor FTI Consulting Canada Inc.

Suite 2500 - 1 Place Ville Marie
Montreal, Quebec H3B 1R1
Telephone : (514) 847-4702 and (514) 847-6076
Fax : (514) 514-286-5474
notifications-mtl@nortonrosefulbright.com
Our reference : 01028478-0001

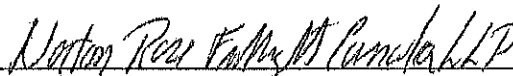
NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the present *Amended Motion by the Monitor for Directions with Respect to Pension Claims* will be presented for adjudication before the Honourable Stephen W. Hamilton, J.S.C., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montréal, in the Montréal Courthouse located at 1, Notre-Dame Street East, Montréal, Québec, on a date, at a time and in a room to be determined by the Court.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, April 13, 2017



NORTON ROSE FULBRIGHT CANADA, LLP
Mtre Sylvain Rigaud and Mtre Chrystal Ashby
Attorneys of the Monitor FTI Canada Consulting Inc.

Suite 2500 - 1 Place Ville Marie
Montreal, Quebec H3B 1R1
Telephone : (514) 847-4702 and (514) 847-6076
Fax : (514) 514-286-5474
notifications-mtl@nortonrosefulbright.com
Our reference : 01028478-0001

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT

Commercial Division

(Sitting as a court designated pursuant to the *Companies'
Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

N°: 500-11-048114-157

**IN THE MATTER OF THE PLAN OF COMPROMISE OR
ARRANGEMENT OF:**

BLOOM LAKE GENERAL PARTNER LIMITED *et al*

Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP *et al***

Mises-en-cause

-and-

**HER MAJESTY IN RIGHT OF NEWFOUNDLAND
& LABRADOR, AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS**

**THE ATTORNEY GENERAL OF CANADA, ACTING ON
BEHALF OF THE OFFICE OF THE SUPERINTENDENT
OF FINANCIAL INSTITUTIONS**

**MICHAEL KEEPER, TERENCE WATT, DAMIEN LABEL
AND NEIL JOHNSON**

UNITED STEEL WORKERS, LOCALS 6254 AND 6285

RÉGIE DES RENTES DU QUÉBEC

**MORNEAU SHEPELL LTD., IN ITS CAPACITY AS
REPLACEMENT PENSION PLAN ADMINISTRATOR**

Mis-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

**AMENDED LIST OF EXHIBITS IN SUPPORT OF THE
AMENDED MOTION BY THE MONITOR FOR DIRECTIONS
WITH RESPECT TO PENSION CLAIMS**

- Exhibit R-1** Wabush Initial Order dated May 20, 2015, as rectified on May 28, 2015;
- Exhibit R-2** Claims Procedure Order dated November 5, 2015, as amended on November 16, 2015;
- Exhibit R-3** Draft Order;
- Exhibit R-4** Wabush Initial Motion dated May 19, 2015;
- Exhibit R-5** Wabush Comeback Order dated June 9, 2015;
- Exhibit R-6** Wabush Comeback Motion dated May 29, 2015;
- Exhibit R-7** Pension Priority and Suspension Order dated June 26, 2015;
- Exhibit R-8** Decision of Justice Kasirer, J.C.A. dated August 18, 2015;
- Exhibit R-9** Asset Purchase Agreement (Port Assets) dated December 23, 2015;
- Exhibit R-10** Port Approval and Vesting Order dated February 1, 2016;
- Exhibit R-11** Asset Purchase Agreement (Block Z) dated January 26, 2016;
- Exhibit R-12** Block Z Approval and Vesting Order dated February 1, 2016;
- Exhibit R-13** N&L Termination Notices dated December 15, 2015;
- Exhibit R-14** OSFI Termination Notice dated December 15, 2015;
- Exhibit R-15** Notices with respect to the Replacement of the Pension Plan Administrator dated March 30, 2016;
- Exhibit R-16** Salaried DB Plan Summary Table;
- Exhibit R-17** Union DB Plan Summary Table;
- Exhibit R-18** Salaried DB Plan Proof of Claim dated December 18, 2015;
- Exhibit R-19** Union DB Plan Proof of Claim dated December 18, 2015;
- Exhibit R-20** 2011 CAPSA Agreement Respecting Multi-Jurisdictional Pension Plans;
- Exhibit R-21** 2016 CAPSA Agreement Respecting Multi-Jurisdictional Pension Plans;
- Exhibit R-22** Memorandum of Agreement entered into by Newfoundland & Labrador in 1986;
- Exhibit R-23** Salaried DB Plan, together with Amendments;
- Exhibit R-24** Union DB Plan, together with Amendments;

Exhibit R-25 Salaried DB Plan Wind-Up Report;

Exhibit R-26 Union DB Plan Wind-Up Report.

Montréal, April 13, 2017

Norton Rose Fulbright Canada LLP

NORTON ROSE FULBRIGHT CANADA, LLP
Mtre Sylvain Rigaud and Mtre Chrystal Ashby
Attorneys of the Monitor
Suite 2500 - 1 Place Ville Marie
Montreal, Quebec H3B 1R1
Telephone : (514) 847-4702 and (514) 847-6076
Telecopieur : (514) 514-286-5474
Notifications-mtl@nortonrosefulbright.com
Our reference : 01028478-0001

NO: 500-11-048114-157

SUPERIOR COURT
DISTRICT OF MONTREAL

IN THE MATTER OF THE PLAN OF COMPROMISE OR
ARRANGEMENT OF:

BLOOM LAKE GENERAL PARTNER LIMITED ET AL

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP
ET AL

Mises-en-cause

-and-

HER MAJESTY IN RIGHT OF NEWFOUNDLAND & LABRADOR,
AS REPRESENTED BY THE SUPERINTENDENT OF PENSIONS
ET AL

Mis-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

AMENDED MOTION BY THE MONITOR FOR DIRECTIONS
WITH RESPECT TO PENSION CLAIMS
(Sections 11 and 23(k) of the Companies' Creditors
Arrangement Act)

ORIGINAL

BO-0042

01028478-0001

Mtre. Sylvain Rigaud and Mtre. Chrystal Ashby
NORTON ROSE FULBRIGHT CANADA LLP

BARRISTERS & SOLICITORS
1 Place Ville Marie, Suite 2500

Montréal, Quebec H3B 1R1 CANADA

Telephone: 514-847-4702

Telephone: 514-847-6076

Fax: +1 514.286.5474

Notifications: mtl@nortonrosefulbright.com

SCHEDULE "C"

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No: 500-11-048114-157

DATE: January 30, 2017

PRESIDED BY THE HONOURABLE STEPHEN W. HAMILTON, J.S.C.

**IN THE MATTER OF THE PLAN OF COMPROMISE OR
ARRANGEMENT OF:**

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION
8568391 CANADA LIMITED
CLIFFS QUÉBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.**

Petitioners

And

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY LIMITED
WABUSH LAKE RAILWAY COMPANY LIMITED**

Mises en cause

And

**MICHAEL KEEPER, TERENCE WATT, DAMIEN LABEL
AND NEIL JOHNSON
SYNDICAT DES MÉTALLOS, SECTIONS LOCALES 6254 ET 6285
MORNEAU SHEPELL LTD, IN ITS CAPACITY AS
REPLACEMENT PENSION PLAN ADMINISTRATOR
HER MAJESTY IN RIGHT OF NEWFOUNLAND
AND LABRADOR, AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS**

**THE ATTORNEY GENERAL OF CANADA, ACTING
ON BEHALF OF THE OFFICE OF THE SUPERINTENDENT
OF FINANCIAL INSTITUTIONS
RÉGIE DES RENTES DU QUÉBEC
VILLE DE SEPT-ÎLES**

Mises en cause

And

FTI CONSULTING CANADA INC.

Monitor

JUDGMENT

INTRODUCTION

[1] The debtors have filed proceedings under the *Companies' Creditors Arrangement Act* ("CCAA").¹ They owe substantial liabilities under two pension plans, including special payments, catch-up special payments and wind-up deficiencies. The Monitor has filed a motion for directions with respect to the priority of the various components of the pension claims.

[2] A preliminary issue has arisen as to whether the Court should request the aid of the Supreme Court of Newfoundland and Labrador (the "NL Court") with respect to the scope and priority of the deemed trust and other security created by the Newfoundland and Labrador *Pension Benefit Act* ("NLPBA"),² which regulates in part the pension plans.

CONTEXT

[3] On May 19, 2015, the Petitioners Wabush Iron Co. Limited and Wabush Resources Inc. and the Mises-en-cause Wabush Mines (a joint venture of Wabush Iron and Wabush Resources), Arnaud Railway Company and Wabush Lake Railway Company Limited (together the "Wabush CCAA Parties") filed a motion for the issuance of an initial order under the CCAA, which was granted the following day by the Court.

[4] Prior to the filing of the motion, Wabush Mines operated (1) the iron ore mine and processing facility located near the Town of Wabush and Labrador City, Newfoundland and Labrador, and (2) the port facilities and a pellet production facility at Pointe-Noire, Québec. Arnaud Railway and Wabush Lake Railway are both federally regulated

¹ R.S.C. 1985, c. C-36.

² S.N.L. 1996, c. P-40.1.

railways that transported iron ore concentrate from the Wabush mine to the Pointe-Noire port. The operations had been discontinued and the employees terminated or laid off prior to the filing of the CCAA motion.

[5] The Wabush CCAA Parties have two pension plans for their employees which include defined benefits:

- A hybrid pension plan for salaried employees at the Wabush mine and the Pointe-Noire port hired before January 1, 2013, known as the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Amaud Railway Company and Wabush Lake Railway Company (the "Salaried Plan"); and
- A pension plan for unionized hourly employees at the Wabush mine and Pointe-Noire port, known as the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Amaud Railway Company and Wabush Lake Railway Company (the "Union Plan").

[6] Wabush Mines was the administrator of both plans.

[7] The majority of the employees covered by the plans reported for work in Newfoundland and Labrador while some reported for work in Québec. Moreover, some of the employees covered by the Union Plan worked for Amaud Railway, which is a federally regulated railway. The result is that the Salaried Plan is governed by the NLPBA, while the Union Plan is governed by both the NLPBA and the federal *Pension Benefits Standards Act* ("PBSA").³ Further, the Union suggests that the Québec *Supplemental Pension Plans Act* ("SPPA")⁴ might be applicable to employees or retirees who reported for work in Québec. Both plans are subject to regulatory oversight by the provincial regulator in Newfoundland and Labrador, the Superintendent of Pensions (the "NL Superintendent"), while the Union Plan is also subject to regulatory oversight by the federal pension regulator, the Office of the Superintendent of Financial Institutions ("OSFI"). The Québec regulator, *Retraite Québec*, might also have a role to play.

[8] On June 26, 2015, in the context of approving the interim financing of the debtors, the Court ordered the suspension of payment by the Wabush CCAA Parties of the monthly amortization payments and the annual lump sum "catch-up" payments coming due under the plans, and confirmed the priority of the Interim Lender Charge over the deemed trusts with respect to the pension liabilities. The Court also ordered the

³ R.S.C. 1985 (2nd Supp.), c. 32.

⁴ CQLR, c R-15.1, s. 49.

suspension of payment of other post-retirement benefits, including life insurance, health care and a supplemental retirement arrangement plan.⁵

[9] On December 16, 2015, the NL Superintendent terminated both plans effective immediately on the basis that the plans failed to meet the solvency requirements under the regulations, the employer has discontinued all of its business operations and it was highly unlikely that any potential buyer of the assets would agree to assume the assets and liabilities of the plans.⁶ On the same date, OSFI terminated the Union Plan effective immediately for the same reasons.⁷

[10] Both the NL Superintendent and OSFI reminded the Wabush CCAA Parties of the employer's obligation upon termination of the plan to pay into the pension fund all amounts that would be required to meet the solvency requirements and the amount necessary to fund the benefits under the plan. They also referred to the rules with respect to deemed trusts.⁸

[11] On January 26, 2016, the salaried retirees received a letter from Wabush Mines notifying them that the NL Superintendent had directed Wabush Mines to reduce the amount of monthly pension benefits of the members by 25%.⁹ Retirees under the Union Plan had their benefits reduced by 21% on March 1, 2016.¹⁰

[12] On March 30, 2016, the NL Superintendent and OSFI appointed Morneau Shepell Ltd as administrator for the plans.¹¹

[13] The Wabush CCAA Parties paid the monthly normal cost payments for both plans up to the termination of the plans on December 16, 2015. As a result, the monthly normal cost payments for the Union Plan were fully paid as of December 16, 2015.¹² The monthly normal cost payments for the Salaried Plan had been overpaid in the amount of \$169,961 as of December 16, 2015.¹³

⁵ 2015 QCCS 3064; motion for leave to appeal dismissed, 2015 QCCA 1351.

⁶ Exhibit R-13.

⁷ Exhibit R-14.

⁸ Exhibits R-13 and R-14.

⁹ Exhibit RESP-7.

¹⁰ Affidavit of Terence Watt, sworn December 14, 2016, par. 19.

¹¹ Exhibit R-15.

¹² There is a debate as to whether the Wabush CCAA Parties were required to pay the full monthly payment for December or only a pro-rated portion. The amount at issue for the period from December 17 to 31, 2015 is \$21,462.

¹³ Exhibit R-16.

[14] However, the Wabush CCAA Parties ceased making the special payments in June 2015 pursuant to the order issued by the Court, with the result that unpaid special payments as of December 16, 2015 total \$2,185,752 for the Salaried Plan¹⁴ and \$3,146,696 for the Union Plan.¹⁵

[15] Further, the Wabush CCAA Parties did not make the lump sum "catch-up" special payments that came due after June 2015. The amount payable is now calculated to be \$3,525,125.¹⁶ These amounts became known with certainty only when the actuarial report was completed and filed in July 2015, but some of these amounts may relate to the pre-filing period.

[16] Finally, the plans are underfunded. The Plan Administrator estimates the wind-up deficits as at December 16, 2015 to be approximately \$26.7 million for the Salaried Plan and approximately \$27.7 million for the Union Plan.

[17] As a result, according to the Monitor, the total amounts owing are approximately \$28.7 million to the Salaried Plan and \$34.4 million to the Union Plan.

[18] The Plan Administrator filed a proof of claim in respect of the Salaried Plan that includes a secured claim in the amount of \$24 million and a restructuring claim in the amount of \$1,932,940,¹⁷ and a proof of claim with respect to the Union Plan that includes a secured claim in the amount of \$29 million and a restructuring claim in the amount of \$6,059,238.¹⁸

[19] The differences in the numbers are not important at this stage. It is sufficient to note that there are very large claims and that the Plan Administrator claims the status of a secured creditor with respect to a substantial part of its claims.

[20] It is also important to note that the Wabush CCAA Parties held assets both in Newfoundland and Labrador and in Québec. Many of the Québec assets have been sold and have generated substantial proceeds currently held by the Monitor.

[21] The Monitor is now working through the claims procedure. In that context, the Monitor applies to the Court for an order declaring that:

- a) normal costs and special payments outstanding as at the date of the Wabush Initial Order are subject to a limited deemed trust;

¹⁴ Exhibit R-16.

¹⁵ Exhibit R-17.

¹⁶ Exhibit R-17.

¹⁷ Exhibit R-18.

¹⁸ Exhibit R-19.

- b) normal costs and special payments payable after the date of the Wabush Initial Order, including additional special payments and catch up payments established on the basis of actuarial reports issued after the Wabush Initial Order, constitute unsecured claims;
- c) the wind-up deficiencies constitute unsecured claims; and
- d) any deemed trust created pursuant to the NLPBA may only charge property in Newfoundland and Labrador.

[22] Those issues are not yet before the Court. A preliminary issue has arisen as to whether the Court should request the aid of the NL Court with respect to the scope and priority of the deemed trust and the lien created by the NLPBA and whether the deemed trust and the lien extend to assets located outside of Newfoundland and Labrador.

POSITION OF THE PARTIES

[23] All parties agree that (1) the Court has jurisdiction to deal with all of the issues, and (2) the Court has the discretion to request the aid of the NL Court.

[24] Three parties suggest that the Court should exercise that discretion and request the aid of the NL Court:

- The Plan Administrator;
- The representatives of the salaried employees and retirees; and
- The NL Superintendent.

[25] The representatives of the salaried employees and retirees have proposed that the following questions should be resolved by the NL Court:

1. The Supreme Court of Canada has confirmed in *Indalex* that provincial laws apply in CCAA proceedings, subject only to the doctrine of paramountcy. Assuming there is no issue of paramountcy, what is the scope of section 32 in the NPBA [NLPBA] deemed trusts in respect of:
 - a) unpaid current service costs;
 - b) unpaid special payments; and,
 - c) unpaid wind-up liability.
2. The Salaried Plan is registered in Newfoundland and regulated by the NPBA.

- a) (i) Does the PBSA deemed trust also apply to those members of the Salaried Plan who worked on the railway (i.e., a federal undertaking)?
(ii) If yes, is there a conflict with the NPBA and PBSA if so, how is the conflict resolved?
 - b) (i) Does the SPPA also apply to those members of the Salaried Plan who reported for work in Québec?
(ii) If yes, is there a conflict with the NPBA and SPPA and if so, how is the conflict resolved?
(iii) Do the Quebec SPPA deemed trusts also apply to Québec Salaried Plan members?
3. Is the NPBA lien and charge in favour of the pension plan administrator in section 32(4) of the NPBA a valid secured claim in favour of the plan administrator? If yes, what amounts does this secured claim encompass?

[26] Three other parties suggest that the Court should not transfer any issues to the NL Court and should decide all of the issues:

- The Monitor;
- The Syndicat des métallos, sections locales 6254 et 6285; and
- The Ville de Sept-Îles.

[27] The Ville de Sept-Îles argues that the request to transfer should be dismissed because it is too late.

[28] Finally, two parties do not take a position on the request to transfer:

- The Attorney-General of Canada, acting on behalf of OSFI; and
- Retraite Québec.

ANALYSIS

1. The jurisdiction of the CCAA Court

[29] In principle, all issues relating to a debtor's insolvency are decided before a single court.¹⁹ This rule is based on the "public interest in the expeditious, efficient and

¹⁹ *Sam Lévy & Associés Inc. v. Azco Mining Inc.*, 2001 SCC 92, par. 25-28.

economical clean-up of the aftermath of a financial collapse.”²⁰ This public interest favours a “single control” of insolvency proceedings by one court as opposed to their fragmentation among several courts.²¹

[30] The Supreme Court in *Sam Lévy* concluded as follows with respect to the relevant test:

76 In the present case, we are confronted with a federal statute that *prima facie* establishes one command centre or “single control” (*Stewart, supra*, at p. 349) for all proceedings related to the bankruptcy (s. 183(1)). Single control is not necessarily inconsistent with transferring particular disputes elsewhere, but a creditor (or debtor) who wishes to fragment the proceedings, and who cannot claim to be a “stranger to the bankruptcy”, has the burden of demonstrating “sufficient cause” to send the trustee scurrying to multiple jurisdictions. Parliament was of the view that a substantial connection sufficient to ground bankruptcy proceedings in a particular district or division is provided by proof of facts within the statutory definition of “locality of a debtor” in s. 2(1). The trustee in that locality is mandated to “recuperate” the assets, and related proceedings are to be controlled by the bankruptcy court of that jurisdiction. The Act is concerned with the economy of winding up the bankrupt estate, even at the price of inflicting additional cost on its creditors and debtors.²²

(Emphasis added)

[31] Although the *Sam Lévy* case was decided in the context of the *Bankruptcy and Insolvency Act* (“BIA”),²³ the same principles apply in the context of the other insolvency legislation, including the CCAA.²⁴ The CCAA court has jurisdiction to deal with all of the issues that arise in the context of the CCAA proceedings.²⁵ The stay of proceedings under the CCAA gives effect to this principle by preventing creditors from bringing proceedings outside the CCAA proceedings without the authorization of the CCAA court.

[32] There are clear efficiencies to having a single court deal with all of the issues in a single judgment.

²⁰ *Ibid*, par. 27.

²¹ *Ibid*, par. 64.

²² *Ibid*, par. 76.

²³ R.S.C. 1985, c. B-3.

²⁴ *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, par. 22; *Newfoundland and Labrador v. AbitibiBowater Inc.*, 2012 SCC 67, par. 21; *Montreal, Maine & Atlantic Canada Co./Montréal, Maine & Atlantique Canada Cie (Arrangement relatif à)*, 2013 QCCS 5194, par. 24-25; *Re Nortel Networks Corporation et al*, 2015 ONSC 1354, par. 24; *Re Essar Steel Algoma Inc.*, 2016 ONSC 595, par. 29-30, judgment of Court of Appeal ordering (i) Cliffs to seek leave to appeal the Order, (ii) the hearing of the leave to appeal motion be expedited, and (iii) the issuance of a stay pending the disposition of the leave to appeal motion, 2016 ONCA 138.

²⁵ Section 16 CCAA provides that the orders of the CCAA court are enforced across Canada.

[33] The general rule is therefore that the Court should rule on all issues that arise in the context of these insolvency proceedings.

2. The discretion to ask for the assistance of another court

[34] There are however situations where another court can deal more efficiently with specific issues. The CCAA Court has jurisdiction to ask for the assistance of another court under Section 17 CCAA:

17 All courts that have jurisdiction under this Act and the officers of those courts shall act in aid of and be auxiliary to each other in all matters provided for in this Act, and an order of a court seeking aid with a request to another court shall be deemed sufficient to enable the latter court to exercise in regard to the matters directed by the order such jurisdiction as either the court that made the request or the court to which the request is made could exercise in regard to similar matters within their respective jurisdictions.

[35] The representative of the salaried employees and retirees also pleaded the notion of *forum non conveniens* under the Civil Code:

3135. Even though a Québec authority has jurisdiction to hear a dispute, it may, exceptionally and on an application by a party, decline jurisdiction if it considers that the authorities of another State are in a better position to decide the dispute.

[36] The Supreme Court held in *Sam Lévy*²⁶ that Article 3135 C.C.Q. does not apply in bankruptcy matters because of Section 187(7) BIA, which provides:

187 (7) The court, on satisfactory proof that the affairs of the bankrupt can be more economically administered within another bankruptcy district or division, or for other sufficient cause, may by order transfer any proceedings under this Act that are pending before it to another bankruptcy district or division.

[37] While Section 17 CCAA is not as explicit, the Court is satisfied that it is not necessary or appropriate to refer to Article 3135 C.C.Q. in the present context. The CCAA court is not being asked to decline jurisdiction, but rather it is being asked to seek the assistance of another court.

[38] The Court is therefore satisfied that, notwithstanding the general rule that it should rule on all issues that arise in the context of these insolvency proceedings, it can seek the assistance of another court. It is a discretionary decision of this Court, based on factors such as cost, expense, risk of contradictory judgments, expertise, etc.

²⁶ *Supra* note 19, par. 62.

3. Specific grounds

[39] The arguments put forward in support of the referral of the issues to the NL Court can be summarized as follows:

a) Legal considerations:

- These are complex and important issues of provincial law;
- The courts in Newfoundland and Labrador possess far greater expertise in interpreting the NLPBA than does the courts in Québec, although these specific questions have not yet been considered by any court in Newfoundland and Labrador;
- The interpretation of the NLPBA is a question of the intention of the legislator in Newfoundland and Labrador, and the NL Court is better situated to determine this intention;

b) Factual considerations:

- It is a question of purely local concern and it may significantly impact a large number of residents of Newfoundland and Labrador;
- The province of Newfoundland and Labrador is closely connected to the dispute: a majority of the employees reported for work in the province and the Wabush CCAA Parties maintained significant business operations in the province;
- If justice is to be done and be seen to be done it is important that consequential decisions on provincial legislation be made by the courts of that province;
- The representatives of the salaried employees and retirees want the NL Court to interpret the NLPBA;

c) Practical considerations:

- The law of another province is treated as a question of fact in Québec, with the result that the conclusion on a matter of foreign law is not binding on subsequent courts and can only be overturned in the presence of a palpable and overriding error;
- It might be difficult to prove the law of Newfoundland and Labrador in a Québec court given the lack of jurisprudence on the specific issues;

- There will be increased costs if the Québec Court interprets the NLPBA because of the need to retain experts to provide legal opinions;
- There is no reason to believe that fragmenting the proceedings will result in additional delay;
- The judgment to be rendered will be a precedent and only a decision of the courts of Newfoundland and Labrador would be an authoritative precedent;
- Other persons or parties may wish to intervene on the issue of the scope of the Section 32 NLPBA deemed trusts, which would be more practical in the NL Court.

[40] These arguments do not convince the Court that this is an appropriate case to refer the issues to the NL Court.

a) Legal considerations

[41] This is the key argument put forward by the parties suggesting that the NLPBA issues be referred to the NL Court: the issues relate to the NLPBA, and the NL Court is best qualified to interpret the NLPBA.

[42] The Court accepts as a starting point that the NLPBA applies in the present matter: the pension plans are regulated by the NL Superintendent in accordance with the NLPBA (although OSFI also regulates the Union Plan in accordance with the PBSA) and the plans expressly provide that they are interpreted in accordance with the NLPBA.

[43] The Court also accepts the obvious proposition that the NL Court is more qualified to deal with an issue of Newfoundland and Labrador law than the courts of Québec, particularly since Newfoundland and Labrador is a common law jurisdiction and Québec is a civil law jurisdiction.

[44] However, that does not mean that the Court will automatically refer every issue governed by the law of another jurisdiction to the courts of that other jurisdiction.

[45] First, there are rules in the Civil Code with respect to how Québec courts deal with issues governed by foreign law. Articles 3083 to 3133 C.C.Q. set out the rules to determine which law is applicable to a dispute before the Québec courts, and Article 2809 C.C.Q. sets out how the foreign law is proven before the Québec courts.

[46] Further, pursuant to these rules, Québec courts regularly hear matters governed by foreign law. The Court of Appeal recently held that the fact that a dispute is governed by foreign law does not have much weight in a *forum non conveniens* analysis:

[98] Si on revoit les considérations du Juge, portant sur dix points, pour conclure que le for géorgien est préférable, deux aspects principaux en ressortent, soit les coûts et la loi applicable.

[99] Quant à cette dernière considération, elle n'est pas d'un grand poids, à mon avis. Parce que le débat porte sur les faits plutôt que sur le droit. Parce que la *common law* est tout de même familière aux tribunaux québécois. Parce que faire la preuve de la loi d'un État américain n'est pas un grand défi, c'est même chose courante.

[100] Et surtout, parce que le critère de la loi applicable ne constitue pas en soi un facteur important. Dans tout litige international, les conflits de lois sont l'ordinaire et non l'exception.²⁷

[47] In other words, the mere fact that a dispute is governed by foreign law is not a good reason to send the case to the foreign jurisdiction. This principle was applied in a CCAA context in the *MMA* case.²⁸

[48] There are examples in the insolvency context of the court with jurisdiction over the insolvency declining to send an issue governed by foreign law to the foreign court. In *Sam Lévy*, the Supreme Court declined to send an insolvency matter to British Columbia simply because there was a choice of B.C. law, stating, "The Quebec courts are perfectly able to apply the law of British Columbia."²⁹

[49] In *Lawrence Home Fashions Inc./Linge de maison Lawrence inc. (Syndic de)*, Justice Schragar, then of this Court, stated :

[18] In any event, should equitable set-off under Ontario law become relevant to the case, Québec judges sitting in such matters, on the presentation of the appropriate evidence, are readily capable of dealing with foreign law issues. Indeed, this is a frequent occurrence particularly in insolvency matters.³⁰

[50] The Ontario courts rejected similar arguments in *Essar Algoma*:

[80] Ontario courts can and do often apply foreign law. In this case I do not consider the fact that the law to be applied is Ohio law much of a factor, if any.³¹

²⁷ *Stormbreaker Marketing and Productions Inc. c. Weinstock*, 2013 QCCA 269, par. 98-100.

²⁸ *MMA*, *supra* note 24, par. 20.

²⁹ *Sam Lévy*, *supra* note 19, par. 61.

³⁰ 2013 QCCS 3015, par. 18.

³¹ *Supra* note 24, par. 80. See also *Nortel Networks*, *supra* note 24, par. 29.

[51] The Monitor submitted cases in which Québec courts have interpreted different provisions of the pension laws of other provinces.³² The Court also notes that it dealt to a more limited extent with the deemed trust under the NLPBA in its decision dated June 26, 2015.

[52] There are nevertheless circumstances where the CCAA court has referred legal issues to the courts of another province. The *Curragh*³³ and *Yukon Zinc*³⁴ judgments were cited as examples of such cases. However, in both cases, the legal issues related to the *Yukon Miners Lien Act*.³⁵ Justice Farley in *Curragh* wrote :

This legislation and its concept of the lien affecting the output of the mine or mining claim is apparently unique to the Yukon Territory.³⁶

[53] Moreover, both cases involved real rights on property in Yukon.

[54] The parties also pointed to *Timminco* as precedent authority directly on point supporting the transfer of a pension issue by the CCAA court to the jurisdiction where the pension plan is registered and has been administered.³⁷ However, *Timminco* is not a precedent in that the parties in that case consented to the referral of the issue and Justice Morawetz simply gave effect to their consent.

[55] Without concluding that the Court would only refer a legal issue if the foreign law at issue is unique, the Court concludes that the arguments favouring the referral of a legal issue are stronger when the foreign law is unique.

[56] It is therefore important to examine the issues that might be referred to the NL Court and the uniqueness of the NLPBA provisions that are at issue in the present matter.

[57] The representatives of the salaried employees and retirees identify the relevant questions as being the scope of the deemed trust and of the lien and charge under Section 32 NLPBA, as well as the interaction between the NLPBA and the federal and Québec statutes.

[58] Section 32 NLPBA provides:

³² *Emerson Électrique du Canada Itée c. Chatigny*, 2013 QCCA 163; *Bourdon c. Stelco Inc.*, 2004 CanLII 13895 (QC CA).

³³ *Canada (Minister of Indian Affairs and Northern Development) v. Curragh Inc.*, [1994] O.J. No. 953 (Gen. Div.)

³⁴ *Yukon Zinc Corp. (Re)*, 2015 BCSC 1961.

³⁵ R.S.Y. 2002, c. 151.

³⁶ *Supra* note 33, par. 11. See also *Yukon Zinc*, *supra* note 34, par. 47 and 57.

³⁷ *Timminco Limited (Re)*, 2012 ONSC 5959.

32. (1) An employer or a participating employer in a multi-employer plan shall ensure, with respect to a pension plan, that

- (a) the money in the pension fund;
- (b) an amount equal to the aggregate of
 - (i) the normal actuarial cost, and
 - (ii) any special payments prescribed by the regulations, that have accrued to date; and
- (c) all
 - (i) amounts deducted by the employer from the member's remuneration, and
 - (ii) other amounts due under the plan from the employer that have not been remitted to the pension fund

are kept separate and apart from the employer's own money, and shall be considered to hold the amounts referred to in paragraphs (a) to (c) in trust for members, former members, and other persons with an entitlement under the plan.

(2) In the event of a liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that under subsection (1) is considered to be held in trust shall be considered to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own money or from the assets of the estate.

(3) Where a pension plan is terminated in whole or in part, an employer who is required to pay contributions to the pension fund shall hold in trust for the member or former member or other person with an entitlement under the plan an amount of money equal to employer contributions due under the plan to the date of termination.

(4) An administrator of a pension plan has a lien and charge on the assets of the employer in an amount equal to the amount required to be held in trust under subsections (1) and (3).

[59] The first point is that there is nothing particularly unique about Section 32 NLPBA.

[60] There is a very similar deemed trust provision in Section 8(1) and (2) PBSA:

8 (1) An employer shall ensure, with respect to its pension plan, that the following amounts are kept separate and apart from the employer's own moneys, and the employer is deemed to hold the amounts referred to in paragraphs (a) to (c) in trust for members of the pension plan, former members, and any other persons entitled to pension benefits under the plan:

(a) the moneys in the pension fund,

(b) an amount equal to the aggregate of the following payments that have accrued to date:

(i) the prescribed payments, and

(ii) the payments that are required to be made under a workout agreement; and

(c) all of the following amounts that have not been remitted to the pension fund:

(i) amounts deducted by the employer from members' remuneration, and

(ii) other amounts due to the pension fund from the employer, including any amounts that are required to be paid under subsection 9.14(2) or 29(6).

(2) In the event of any liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that by subsection (1) is deemed to be held in trust shall be deemed to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own moneys or from the assets of the estate.

[61] In Québec, the SPPA provides :

49. Until contributions and accrued interest are paid into the pension fund or to the insurer, they are deemed to be held in trust by the employer, whether or not the latter has kept them separate from his property.

[62] There are similar deemed trusts and/or liens in every Canadian province outside Québec except Prince Edward Island: Ontario,³⁸ British Columbia,³⁹ Alberta,⁴⁰ Saskatchewan,⁴¹ Manitoba,⁴² Nova Scotia⁴³ and New Brunswick.⁴⁴

[63] The second point is that there is no Newfoundland and Labrador jurisprudence interpreting the relevant provisions of the NLPBA. The NL Superintendent pleaded that "the courts of Newfoundland & Labrador possess far greater expertise in interpreting the PBA [NLPBA] than does the Superior Court of Québec." While this is undoubtedly true with respect to the NLPBA as a whole, it is not true with respect to Section 32 NLPBA. In an earlier ruling also issued in the *Yukon Zinc* matter, Justice Fitzpatrick of the B.C. Supreme Court refused to decline jurisdiction and refer a matter involving the Yukon *Miners Lien Act* to the courts of Yukon and one of the factors that went against referring the matter to the Yukon court was the lack of jurisprudence in the Yukon court.⁴⁵

[64] Moreover, in this case, because of the similarities between the NLPBA and the federal and other provincial pension laws, the judge interpreting the NLPBA will likely refer to decisions of the courts of other provinces interpreting their legislation or the federal PBSA.

[65] The Québec Court should be in as good a position as the NL Court in that exercise.

[66] Finally, as is typical in these cases, there is a close interplay between the NLPBA and the CCAA. The first question proposed by the representatives of the salaried employees and retirees is: "Assuming there is no issue of paramountcy, what is the scope of section 32 in the NPBA [NLPBA] deemed trusts". The scope of the NLPBA is not relevant if the NLPBA does not apply because of a conflict with the CCAA and federal paramountcy. In that sense, there may not even be a need to deal with the interpretation of the NLPBA.

[67] Moreover, there are issues in this case with the federal PBSA and the Québec SPPA. The representatives of the salaried employees and retirees suggest that the following questions are relevant:

2. The Salaried Plan is registered in Newfoundland and regulated by the NPBA.

³⁸ Ontario *Pension Benefits Act*, R.S.O. 1990, c. P.8, s. 57.

³⁹ British Columbia *Pension Benefits Standards Act*, S.B.C. 2012, c. 30, s. 58.

⁴⁰ Alberta *Employment Pension Plans Act*, S.A. 2012, c. E-8.1, s. 58 and 60.

⁴¹ Saskatchewan *Pension Benefits Act*, 1992, S.S. 1992, c P-6.001, s. 43.

⁴² Manitoba *Pension Benefits Act*, C.C.S.M., c. P32, s. 28.

⁴³ Nova Scotia *Pension Benefits Act*, S.N.S. 2011, c. 41, s. 80.

⁴⁴ New Brunswick *Pension Benefits Act*, S.N.B. 1987, c P-5.1, s. 51.

⁴⁵ *Yukon Zinc Corporation (Re)*, 2015 BCSC 836, par. 90.

- a) (i) Does the PBSA deemed trust also apply to those members of the Salaried Plan who worked on the railway (i.e., a federal undertaking)?
- (ii) If yes, is there a conflict with the NPBA and PBSA if so, how is the conflict resolved?
- b) (i) Does the SPPA also apply to those members of the Salaried Plan who reported for work in Québec?
- (ii) If yes, is there a conflict with the NPBA and SPPA and if so, how is the conflict resolved?
- (iii) Do the Quebec SPPA deemed trusts also apply to Québec Salaried Plan members?

[68] The representatives of the salaried employees and retirees and the NL Superintendent suggest that, in the interests of simplicity and expediency, all of these questions should be referred to the NL Court.

[69] The Court has great difficulty with this suggestion. On what basis should the Court conclude that the NL Court is in a better position to decide whether the Québec SPPA and deemed trust apply to employees who reported for work in Québec (question 2(b)(i) and (iii)) and how the conflict between the NLPBA and the SPPA should be resolved (question 2(b)(ii))? The first are pure questions of Québec law, and the last is a question where the laws of Québec and of Newfoundland and Labrador have equal application. There are similar questions with respect to the federal PBSA (question 2(c)), which the Court is in as good a position to decide as the NL Court.

[70] The Court will not refer issues of Québec law or federal law to the NL Court, and if those issues are too closely interrelated to the NLPBA issues, or if in the interests of simplicity and expediency they should all be decided by the same court, then the solution is not to refer any issues to the NL Court.

[71] In the earlier *Yukon Zinc* ruling where Justice Fitzpatrick refused to refer the matter to the courts of Yukon, she found that the issues related to the interrelationship between the *Yukon Miners Lien Act* and the rights asserted by others under B.C. law, in relation to assets the majority of which were located in British Columbia:

[89] As for the law to be applied to the various issues, it is clear that whatever forum is used to resolve these issues, there will be a blend of both British Columbian contract law and Yukon miner's lien law. The majority of the concentrate is located in British Columbia and was in this Province well before the 2015 Procon Lien was registered. Further, the contract rights are to be decided in accordance with British Columbian law, particularly as to if, and if so, when, title to the concentrate passed from Yukon Zinc to Transamine.

[90] This is not akin to the situation discussed in *Ecco Heating Products Ltd. v. J.K. Campbell & Associates Ltd.*, 1990 CanLII 1631 (BC CA), [1990] 48 B.C.L.R. (2d) 36 (C.A.), where the major issue arose under builder's lien legislation in British Columbia and where the court referred to the "extensive existing relevant jurisprudence" in British Columbia: at 43-44. It is common ground here that there is no case law on the issues of scope and priority under the *MLA* that arise here, let alone relevant Yukon jurisprudence.

[91] It is quite apparent that some issues arise under the *MLA* and, in particular, issues relating to Procon's rights in relation to the concentrate remaining in Yukon which is claimed by Transamine under British Columbian law. Transamine argues that this Court can take judicial notice of the *MLA*: see *Evidence Act*, R.S.B.C. 1996, c. 124, s. 24(2)(e). In any event, Procon has fully researched the issues as they arise under the *MLA* and made submissions on them. To turn the tables on Procon, if I were to decline jurisdiction in favour of the Yukon courts, there equally would be issues as to the Yukon court interpreting and applying British Columbian law on the contract issues.

[92] It would be impossible in the circumstances to bifurcate the issues based on the applicable law. Even if bifurcation was available, it would be neither a practical nor an efficient strategy in resolving the issues between Yukon Zinc, Procon and Transamine.

(Emphasis added)

[72] In the present matter, the bulk of the assets on which the deemed trust or the lien created by the NLPBA may apply are the proceeds of the sale of assets in Québec.

[73] On balance, the legal considerations do not favour referring the issues to the NL Court.

b) Factual considerations

[74] The parties suggesting that the NLPBA issues be referred to the NL Court also argue that these are essentially local issues that should be decided by the local court.

[75] It is clear that there are significant factual links between these issues and the province of Newfoundland and Labrador.

[76] In particular, the Wabush mine is located in Newfoundland and Labrador and most of the employees reported to that mine. As a result, many of the retirees are currently resident in Newfoundland and Labrador. The representatives of the salaried employees and retirees want the NL Court to interpret the NLPBA.

[77] However, there are equally strong factual links to the province of Québec: the Pointe-Noire facility is in Québec and most of the railway joining the Wabush mine and the Pointe-Noire facility is in Québec. There are almost as many employees and retirees in Québec:

	Salaried Plan	Union Plan
Newfoundland and Labrador	313	1,005
Québec	329	661
Other	14	66 ⁴⁶

[78] As a result, this is not a matter of purely local concern in Newfoundland and Labrador.

[79] Although the representatives of the salaried employees and retirees want the NL Court to interpret the NLPBA, more than half of the persons that they represent live in Québec.

[80] It is also worth noting that the Union, which represents more employees and retirees, asks that the case remain in Québec, even though most of their members reside in Newfoundland and Labrador.

c) Practical considerations

[81] The parties suggesting that the NLPBA issues be referred to the NL Court argue that the law of Newfoundland and Labrador is in principle a question of fact in a Québec court which is proven with expert witnesses. They argue that this has a series of somewhat inconsistent consequences:

- The parties will have to hire experts, which is costly and time consuming;
- It will be difficult to find experts because these questions have never been litigated before;
- If there is an appeal, the interpretation of the NLPBA will be treated as a question of fact and therefore only subject to be overturned if there is a palpable and overriding error.

⁴⁶ Watt Affidavit, par. 16.

[82] This seems to exaggerate the difficulty. The Court can take judicial notice of the law of another province.⁴⁷ This is particularly true when it is an issue of interpreting a statute.⁴⁸ In this case, where the parties plead that it will be difficult to find an expert, it seems unlikely that the Court would require expert evidence. This is particularly so when the provisions of the NLPBA which are at issue are similar to the provisions of the federal PBSA with respect to which expert evidence is not admissible. If there is no expert evidence to be offered, then there is no expense. A finding of fact with respect to expert evidence may attract the higher standard for appellate review of a palpable and overriding error.⁴⁹ This does not mean that every ruling on an issue of foreign law attracts the same standard. If the judge decides the interpretation of the NLPBA without considering the credibility of expert witnesses, then there is no reason for the Court of Appeal to apply the higher standard for appellate review.

[83] In terms of cost, it is difficult to see how the cost of continuing the proceedings in Québec will be higher than the cost of hiring attorneys in Newfoundland and Labrador and debating part of the issues there. The Union and Sept-Îles argued that it would be more expensive for them to argue the issues in Newfoundland and Labrador, and they added that they pay their own costs, unlike the representatives of the salaried employees and retirees and the Plan Administrator.

[84] Another issue is the delays that the referral might create.

[85] Sept-Îles bases its argument that it is too late now to raise the issue of a transfer on the fact that the Court already dealt with some of these issues 18 months ago. The representatives of the salaried employees and retirees plead that they raised the issue of a possible transfer of issues to the NL Court at the hearing of the motion for approval of the Claims Procedure Order on November 16, 2015.

[86] The Court will not dismiss the issue for lateness. However, it is relevant that the issue is being debated now as opposed to 18 months ago. If the issue had been debated at that time, the Court might have been less concerned about the possible delays that would result from referring the issues to the NL Court.

[87] The parties suggesting that the NLPBA issues be referred to the NL Court plead that there is no reason to believe that fragmenting the proceedings will result in additional delay. They do not however offer the Court any concrete indication of how quickly the case could proceed through the NL Court and any appeal.

[88] The Court is concerned by the possible delay. The parties pointed to *Timminco*, where the CCAA Court transferred a pension issue to the Québec Superior Court, as an example of how these referrals should work. In that case, the parties consented to refer

⁴⁷ Article 2809 C.C.Q.

⁴⁸ *Constructions Beauce-Atlas Inc. c. Pomerleau Inc.*, 2013 QCCS 4077, par. 14.

⁴⁹ *Canada (Minister of Citizenship and Immigration) v. Asini*, 2001 FCA 311, par. 26.

the Québec pension aspects of the CCAA file that was being litigated in Ontario to a Québec court. Even in those circumstances, the delay between the referral (October 18, 2012)⁵⁰ and the final judgment of the Québec court (January 24, 2014)⁵¹ was over 15 months.

[89] Finally, the Court does not consider the question of whether its decision will or will not be treated as a precedent to be a relevant consideration. Similarly, the Court does not consider the possibility of intervenants to be relevant. The Court's focus is on resolving the difficulties of the parties appearing before it. If the government of Newfoundland and Labrador wishes to obtain a judgment from the courts of the province on the interpretation of the NLPBA, it can refer a matter to the Court of Appeal of Newfoundland and Labrador.⁵²

CONCLUSION

[90] For all of the foregoing reasons, the Court concludes that it is not appropriate in the present circumstances to refer the proposed questions to the NL Court.

FOR THESE REASONS, THE COURT:

[91] **DECIDES** that it has jurisdiction to deal with the issues related to the interpretation of the Newfoundland and Labrador *Pension Benefits Act* in the context of the present proceedings under the *Companies' Creditors Arrangement Act* and that it will not refer those issues to the Supreme Court of Newfoundland and Labrador;

[92] **THE WHOLE WITHOUT JUDICIAL COSTS.**



Stephen W. Hamilton, J.S.C.

Mtre Bernard Boucher
BLAKE, CASSELS & GRAYDON
For the Petitioners

Mtre Sylvain Rigaud
Mtre Chrystal Ashby
NORTON ROSE FULBRIGHT CANADA
For the Monitor

⁵⁰ *Supra* note 37.

⁵¹ 2014 QCCS 174.

⁵² *Judicature Act*, R.S.N.L. 1990, c. J-4, Section 13.

Mtre Nicholas Scheib
SCHEIB LEGAL
Mtre Andrew Hatnay
KOSKIE MINSKY LLP
For the mises en cause Michael Keeper, Terence Watt,
Damien Lebel, and Neil Johnson

Mtre Daniel Boudreault
PHILION, LEBLANC, BEAUDRY
For the mise en cause Syndicat des métallos, sections locales 6254 et 6285

Mtre Ronald A. Pink
PINK LARKIN
For the mise en cause Morneau Shepell Ltd, in its capacity
as replacement pension plan administrator

Mtre Doug Mitchell
Mtre Edward Béchard-Torres
IRVING MITCHELL KALICHMAN
For the mise en cause Her Majesty in Right of Newfoundland and
Labrador, as represented by the Superintendent of Pensions

Mtre Pierre Lecavalier
MINISTÈRE DE LA JUSTICE CANADA
For the mise en cause the Attorney General of Canada, acting on behalf
of the office of the Superintendent of financial institutions

Mtre Sophie Vaillancourt
Mtre Roberto Clocchiatti
RETRAITE QUÉBEC
For the mise en cause Régie des rentes du Québec

Mtre Martin Roy
STEIN MONAST
For the mise en cause Ville de Sept-Îles

Date of hearing: December 20, 2016

Confidential Appendix D

Status of Negotiations of Asset Purchase Agreement