

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 section 32 of the
Pension Benefits Act, 1997, SNL 1996, c P
4.01

FACTUM OF THE INTERVENOR, THE VILLE DE SEPT ILES

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**Solicitors for the Intervenor,
the Ville de Sept-Iles**

PART I - OVERVIEW

1. The Ville de Sept-Iles (the "**City**") is a legal person constituted under the Québec *Cities and Towns Act*, CQLR, c C-19.
2. The City is a secured creditor, for unpaid property taxes, of some of the protected companies in the context of proceedings initiated under the *Companies' Creditor Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**") before the Québec Superior Court for the District of Montréal (the "**CCAA Court**") in the Court record bearing number 500-11-048114-157.
3. The *Civil Code of Québec*, SQ 1991, c 64, provides that cities' claims for unpaid property taxes are prior claims which benefit from an important protection. Notably, they constitute a right *in rem*, and confer on the holder of the claims the right to follow the taxable property into whatever hands it may come. Such rights take priority over other creditors and any third party.
4. The City participated in the June 28 and 29, 2017 hearings before the CCAA Court with respect to the Monitor's *Motion for Directions with Respect to Pension Claims*. The City argued, among other things, that if the deemed trusts and lien and charge provided by the *Pension Benefits Act*, SNL 1996, c P-4.01 apply or exist in favor of the members of the *Contributory Pension Plan for Salaried Employees of Wabush Mines*, they would not outrank the City's secured claim for unpaid property taxes.

PART II – CONCISE STATEMENT OF FACTS

5. The City concurs with the position of the Monitor with regard to the facts as set out in its August 14, 2017 Factum in this matter.

PART III – LIST OF THE ISSUES

6. The City concurs with and adopts the list of issues as set out by the Monitor in its August 14, 2017 Factum in this matter.

PART IV – ARGUMENT

7. The City concurs with and adopts the position of the Monitor set out in its August 14, 2017 Factum in this matter.

8. Further, and in the alternative, the City respectfully submits that this Court cannot and should not opine on any priority dispute heard by the CCAA Court.
9. In any event, the City respectfully submits that any determination or opinion of this Honourable Court cannot affect the City's rights before the CCAA Court. Only the CCAA Court has jurisdiction, at first instance, to determine the respective priorities and other rights of parties as they relate to, in particular, property taxes and pension claims.

PART V – RELIEF SOUGHT

10. The City respectfully requests that this Honourable Court:
 - (a) decline to answer the Reference Questions;
 - (b) in the alternative to (a), state that the trust, lien and charge created under section 32 of the *Pension Benefits Act*, SNL 1996, c P-4.01 do not extend to the wind-up deficit; and
 - (c) in the further alternative to (a) and (b), decline to make determinations and/or offer its opinion, hypothetical or otherwise, regarding the respective priorities of parties before the CCAA Court.

DATED at St. John's, in the Province of Newfoundland and Labrador this 22nd day of August, 2017.



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AND TO: **Rolf Pritchard, Q.C. and Philip Osborne**

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