



# LANGLOIS

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**Supreme Court of Canada**  
301 Wellington  
Ottawa ON K1A 0J1

**BY EMAIL AND COURIER**

Attention: Mtre. Chantal Charbonneau, Registrar

**Subject: SCC Court file No 40625**  
***Agence du revenu du Québec c. FTI Conseil Canada, et al.***  
Respondents Quebec North Shore and Labrador Railway Company Inc. and Iron Ore Company of Canada's Response to the Application for Leave to Appeal  
Our ref.: 336805.0004

Dear Mtre. Charbonneau,

This letter is sent on behalf of the Respondents Quebec North Shore and Labrador Railway Company Inc. ("**QNS&L**") and Iron Ore Company of Canada ("**IOC**") in response to the Agence du Revenu du Québec's (the "**ARQ**") Application for leave to appeal ("**Application**") to the Supreme Court of Canada ("**SCC**") in the above-captioned file.

The ARQ seeks leave to appeal from the Quebec Court of Appeal's decision rendered on December 22, 2022 (the "**QCA Judgment**") affirming the decision rendered on November 8, 2021 by the Quebec Superior Court (the Honourable Michel A. Pinsonnault acting as the CCAA supervising judge) (the "**QCS Judgment**"). The QCS Judgment declared that the ARQ cannot set-off a non-secured pre-filing claim of approximately \$13.4M against Cliffs Québec Iron Mining ULC ("**CQIM**") with a post-filing debt of \$7.5M for certain tax credits/refunds owed to CQIM.

The arguments raised in the ARQ's Application exclusively relate to a creditor's right to effect compensation between pre and post filing claims in the context of proceedings under the Companies' Creditors Arrangement Act ("**CCAA**"). However, this very issue of pre-post compensation was considered and resolved by the SCC in the recent case of *Montréal (City) v. Deloitte Restructuring Inc.*, [2021 SCC 53](#) [*Deloitte*]. The Application does not raise any new question of law regarding pre-post compensation in general, or the application of the legal framework set out in *Deloitte* regarding the exercise of the discretion to permit pre-post

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compensation. As such, the Application does not raise any issue of public importance that ought to be decided by the SCC.

Moreover, the proposed appeal is bound to fail. Even if the QSC Judgment was rendered before the SCC's decision in *Deloitte*, the CCAA supervising judge specifically considered whether it would be appropriate to allow pre-post compensation and decided against it<sup>1</sup>. On appeal, the QCA duly considered the reasoning in *Deloitte*, noting that the court has the discretion to allow pre-post compensation in exceptional circumstances<sup>2</sup> to be exercised in light of the considerations identified as relevant in *Deloitte*<sup>3</sup>. The ARQ argues that the QCA placed undue emphasis on certain factors (which it admits were relevant to the exercise of the discretion) and failed to fully consider other relevant factors<sup>4</sup>. QNS&L and IOC do not agree. That said, the weighing of relevant factors is at the heart of the exercise of the CCAA supervising judge's wide discretion and the intervention of the SCC would therefore be unwarranted, in the absence of a demonstration that the QCA or QSC Judgments contain errors in principle or amount to an unreasonable exercise of discretion<sup>5</sup>.

Even if the QCA or the QSC committed reviewable errors in the exercise of their discretion (which is denied), leave to appeal should nevertheless be refused. As noted above, the SCC decision in *Deloitte* settled the law on pre-post compensation. A reviewable error in the application of well settled law is insufficient to warrant an appeal to the SCC. Indeed, the SCC's role is not to correct errors but to address issues of national or public importance, i.e., issues that go beyond the interests of the immediate litigants. The Application raises none. In particular, the ARQ does not argue that leave should be granted because other Canadian courts have misapplied or mischaracterized the principles set out in *Deloitte*, or that the QCA Judgment contradicts judgements from other Canadian courts.

For these reasons, QNS&L and IOC submit that the ARQ's Application should be dismissed, with costs.

Kind Regards,

**Langlois Lawyers, LLP**



Mtre. Gerry Apostolatos  
GA/II

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<sup>1</sup> QSC Judgement, at paras. 152-156 (ARQ's Application, p. 36).

<sup>2</sup> QCA Judgement, at para. 44 (ARQ's Application, p. 52).

<sup>3</sup> QCA Judgement, at para. 46-47 (ARQ's Application, p. 53).

<sup>4</sup> ARQ's Memorandum of Argument, at para. 33 (ARQ's Application, p. 63-64).

<sup>5</sup> *9354-9186 Québec inc. v. Callidus Capital Corp.*, [2020] 1 SCR 521, at para 53.