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March 24, 2023

Via E-mail and Courier

Chantal Carbonneau, Registrar
Supreme Court of Canada
301 Wellington
Ottawa, Ontario K1A 0J1

Dear Mtre. Carbonneau:

Re: *In the Matter of the Companies' Creditors Arrangements Act ("CCAA") of Bloom Lake General Partner Limited et al. ("CCAA Proceedings")*
Response by Representative Counsel to Non-Unionized Salaried Employees of Wabush Mines to the Application for Leave to Appeal by Agence du Revenu du Qu bec ("RQ")
SCC Court File: 40625

This letter is sent in response to RQ's Application for Leave to Appeal to the Supreme Court of Canada (the "**RQ Application**") from the judgment rendered on December 22, 2022 by the Qu bec Court of Appeal ("**QCA**"). The QCA affirmed the decision rendered on November 8, 2021 by the supervising CCAA judge, Mr. Justice Michel A. Pinsonnault of the Qu bec Superior Court in the CCAA Proceedings of Bloom Lake and its related entities, including, *inter alia*, Cliffs Qu bec Iron Mining ULC ("**CQIM**") and Wabush Mines (collectively, the "**CCAA Parties**").

The undersigned, Koskie Minsky LLP and Fishman Flanz Meland Paquin LLP, are the Representative Counsel who are appointed by the Qu bec Superior Court to represent over 600 non-union employees and retirees of Wabush Mines in the CCAA Proceedings who worked in Newfoundland and Labrador and Qu bec. These individuals are owed amounts from the CCAA Parties for terminated health benefits and pension benefit losses. The vast majority of them are elderly and retired and as such, they are vulnerable creditors. Their situation and the role of Representative Counsel are more fully described in the *Motion for an Order for Legal Costs of Salaried/Non-Union Employees and Retirees* and the *Ninth Order for Legal Costs of Salaried/Non-Union Employees and Retirees* dated June 21, 2022, attached hereto, respectively, as Exhibit 1 and Exhibit 2.

We have reviewed the letters submitted by counsel to the CCAA Monitor (FTI Consulting Canada Inc.; the “**Monitor**”), the CCAA Parties, and Quebec North Shore and Labrador Railway Company Inc. and Iron Ore Company of Canada, in response to the RQ Application. We agree with their substantive legal submissions. We write to add the following from the perspective of terminated employees and retirees.

While under CCAA protection, Wabush Mines shut down, its employees were terminated and its pension plans were wound up in an underfunded state. In addition to losing the loss of health benefits, the wind up of the non-union pension plan (as well as the union plan) in an underfunded state resulted in losses to the monthly pension benefits paid to retirees.

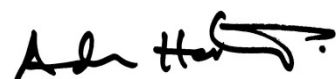
As Representative Counsel, we filed claims in the CCAA Proceedings for amounts owing to the former employees and retirees for their pension and benefits losses. In accordance with the CCAA Plan of Compromise and Arrangement that was approved by the majority of creditors and sanctioned by the CCAA Court on June 29, 2018, the Monitor has released two interim distributions to creditors in respect of their claims, including to the former employees and retirees, but only at a fraction of their claim amount. A claim on behalf of the underfunded non-union pension plan also received a distribution, however, the amount was less than the deficit in the plan and thus only partially improved the reduced pensions of the retirees.

At this stage, the former employees and retirees have been waiting for the final distribution from the estates of the CCAA Parties for over 18 months while the protracted litigation between RQ and the Monitor remains unresolved. We understand that the RQ Application is now the last major outstanding matter in the CCAA Proceedings, and it is delaying the final distribution to creditors. As appears from the Monitor’s Application to be Heard by Preference and the Judgment rendered by Mrs. Chief Justice Manon Savard on May 16, 2022, attached hereto, respectively, as Exhibit 3 and Exhibit 4, the prejudice suffered by the employees and retirees was a key factor in the decision of the QCA to place the case on its priority role in order for the appeal to be heard by preference.

We respectfully submit that the RQ application does not raise any issue of national importance, and does not satisfy the Supreme Court leave criteria. The RQ Application should be dismissed.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH/vdl

FISHMAN FLANZ MELAND PAQUIN LLP



Nicolas Brochu

c.c. Clients
Bernard Boucher, Youssef Kabbaf, *Blake, Cassels & Graydon LLP*, CQIM
Sylvain Rigaud, Bogdan-Alexandru Dobrota and Jack M. Little, *Woods LLP*, FTI Consulting Canada Inc.
Daniel Cantin, Jean-Claude Gaudette and Henrick Lavoie, Larivière Meunier, Agence du Revenu du Québec and Canada Revenue Agency
Gerry Apostolatos, *Langlois Lawyers LLP*, Québec North Shore and Labrador Railway Company and Iron Ore Corporation.

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL**

No: 500-11-048114-157

**SUPERIOR COURT
(Commercial Division)**

**IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, 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-

FTI CONSULTING CANADA INC.

Monitor

-and-

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

PETITIONERS-Mises-en-cause

-and-

**UNITED STEELWORKERS, LOCAL 6254,
UNITED STEELWORKERS, LOCAL 6285**

Mises-en-cause

-and-

MORNEAU SHEPELL
Mise-en-cause

**MOTION FOR AN ORDER FOR LEGAL COSTS OF SALARIED/NON-UNION
EMPLOYEES AND RETIREES**

(Sections 11 and 11.52 of the *Companies' Creditors Arrangement Act*)

TO THE HONOURABLE MR. JUSTICE MICHEL A. PINSONNAULT, J.S.C., OR TO ONE OF THE HONOURABLE JUDGES SITTING IN THE COMMERCIAL DIVISION IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE PETITIONERS-MISES-EN-CAUSE RESPECTFULLY SUBMIT THE FOLLOWING:

INTRODUCTION

1. Pursuant to the Order of the Honourable Stephen W. Hamilton J.S.C. (as he was then) dated June 22, 2015, as revised by the Order issued on December 21, 2017, (the “**Representation Order**”), Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson are the Court-appointed representatives (the “**Representatives**”) of all Salaried/Non-union employees and retirees of the Wabush CCAA Parties (as defined below) (the “**Salaried Members**”) in the CCAA proceedings of the Wabush CCAA Parties (the “**CCAA Proceedings**”) and the firms of Koskie Minsky LLP (“**KM**”) of Toronto, and Fishman Flanz Meland Paquin LLP (“**FFMP**”) of Montreal are the Representative Counsel of all of the Salaried Members.
2. The Representatives and Representative Counsel are responsible for the representation of approximately 690 Salaried Members in these CCAA proceedings.

BACKGROUND

3. Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company, and Wabush Lake Railway Company Limited (collectively, the “**Wabush CCAA Parties**”) had operated an open-pit iron ore mine in northern Labrador and a processing and shipping facilities in Sept-Iles, Quebec.
4. On May 20, 2015, the Wabush CCAA Parties obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (“**CCAA**”). FTI Consulting Canada Inc. was appointed as the Monitor. The CCAA Initial Order includes, among other things, a stay of all proceedings that had been previously brought or could be brought against the Wabush CCAA Parties.
5. While under CCAA protection, Wabush Mines shut down all mining operations and began a sales process of all of its assets under CCAA protection.

6. As part of their compensation as employees of the Wabush CCAA Parties, the Salaried Members earned post-retirement benefits which the Wabush CCAA Parties were contractually obligated to pay to them in their retirement years, including:
 - (a) a monthly pension benefit paid on retirement from the Contributory Defined Benefit Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent (Nfld & Lab. Reg. No. 0021314, CRA Reg. No. 0343558) (the "**Salaried Pension Plan**");
 - (b) retiree health benefits and life insurance; and,
 - (c) an additional supplemental pension benefit for certain senior managers paid directly by the company (collectively, with the health and life insurance benefits referred to in (b) above, the "other post-employment benefits" or "**OPEBs**").
7. The Wabush CCAA Parties terminated the Salaried Members OPEBs entirely, immediately after obtaining CCAA protection. The loss to the Salaried Members was in the amount of approximately \$469,355,000.
8. The Salaried Pension Plan was underfunded, meaning that there were not enough assets in the plan to pay full pension benefits, by an amount of approximately \$27,450,000. This precipitated the Newfoundland Superintendent of Pensions (the "**Superintendent**") to order its wind up while the company was under CCAA protection, as well as a 25% reduction to the monthly pension benefits being paid to retirees.
9. The Salaried Members thus became major creditors of the Wabush CCAA Parties.
10. The vast majority of the Salaried Members are retired and elderly individuals. They are not commercial creditors, and do not have union representation. Prior to the appointment of Representative Counsel, they constituted one of the most vulnerable creditor groups in these CCAA proceedings without means to represent themselves in complex and, often adversarial, insolvency proceedings where they had been significantly prejudiced.

Background to Legal Costs Orders for the Salaried Members

11. On June 22, 2015, four Salaried Members and Representative Counsel were appointed on behalf of the Salaried Members by Mr. Justice Hamilton.
12. Representative Counsel has provided important representation and assistance to the Salaried Members throughout the CCAA proceedings, including valuing and resolving claims for amounts owing to the Salaried Members for their OPEB and pension losses.
13. Representative Counsel also functions as a single point of representation and contact for the 690 Salaried Members, thus streamlining the CCAA process and generating costs savings.

14. In addition to settling the claims for the terminated OPEBs and pension losses, Representative Counsel was successful in resolving two major issues on behalf of the Salaried Members:
 - (a) advancing a claim for priority for the deficit in the underfunded Salaried Pension Plan which was ultimately settled and resulted in an improvement to the funded status of the Salaried Pension Plan above that of the deficit being treated as an unsecured claim; and
 - (b) outside the CCAA proceeding, filing a class action on behalf of the same class of Salaried Members before the Newfoundland Superior Court against the non-CCAA filed parent companies of the Wabush CCAA Parties, seeking compensation for the losses suffered by the Salaried Members in respect of their pension losses and the terminated OPEBs. The class action was also ultimately settled on favourable terms for the Salaried Members¹

(together the "**Pension Settlement**").
15. As part of the Representation Order of Mr. Justice Hamilton dated June 22, 2015, the legal costs of the Representatives incurred from the inception of the CCAA proceedings were ordered to be paid by the Wabush CCAA Parties. Further cost orders were issued throughout the CCAA proceedings as the work required to represent the Salaried Members continued.
16. The motions for cost orders proceeded unopposed, following often extensive negotiations with the Monitor and Wabush CCAA Parties.
17. In certain cases, the amount of the "fee cap" in the previous cost order was exceeded due to the work required in the period of the order, which in turn required another cost order to be sought for those "excess" incurred costs to be paid, as well as future anticipated costs. The chronology of costs orders is summarized below:
 - (a) On October 28, 2016, by further Order of Mr. Justice Hamilton, the legal costs of the Representatives incurred prior to October 1, 2016 that were incurred in excess of the amount ordered in the June 22, 2015 Representation Order, and the Representatives' legal costs for the period from October 1, 2016 until January 31, 2017, were directed to be paid by the Wabush CCAA Parties.
 - (b) On May 31, 2017, by further Order of Mr. Justice Hamilton, the excess legal costs of the Representatives prior to February 1, 2017 and the Representatives' legal costs for the period from February 1, 2017 until June 30, 2017 were directed to be paid by the Wabush CCAA Parties.

¹ The USW commenced a similar class action on behalf of its members, which was also settled.

- (c) On June 28, 2017, by further Order of Mr. Justice Hamilton, the Representatives' legal costs for the period from July 1, 2017 until November 30, 2017 were directed to be paid by the Wabush CCAA Parties.
- (d) On December 21, 2017, by further Order of Mr. Justice Hamilton, the firm FFMP was appointed as Québec Representative Counsel and the legal costs of FFMP for the months of October and November, 2017 and the Representatives' legal costs for the period from December 1, 2017 until March 31, 2018 were directed to be paid by the Wabush CCAA Parties.
- (e) On April 16, 2018, by further Order of Mr. Justice Hamilton, the legal costs of the Representatives for the period of April 1, 2018 to June 29, 2018 were directed to be paid by the Wabush CCAA Parties.
- (f) On June 29, 2018, the same day that Mr. Justice Hamilton approved the CCAA Plan (as defined below), he also ordered that the excess legal costs of the Representatives for the period April 1, 2018 to June 29, 2018 were to be paid by the Wabush CCAA Parties and established an aggregate cap of \$100,000 for the period from June 30, 2018, until the discharge of Representative Counsel or termination of the CCAA proceedings.
- (g) On September 23, 2019, Mr. Justice Pinsonnault ordered that the Wabush CCAA Parties pay the excess legal costs of the Representatives for the period June 30, 2018 to August 31, 2019 and established an aggregate fee cap of \$75,000 for the period from September 1, 2019 to the earlier of the discharge of Representative Counsel or the termination of the CCAA proceedings (the "**Eighth Order for Legal Costs**").

Implementation of the CCAA Plan

- 18. On June 29, 2018, after extensive negotiations with creditors, including the Salaried Members, an Amended and Restated Joint Plan of Compromise and Arrangement was reached between the Wabush CCAA Parties and their creditors, which was approved by the Court (the "**CCAA Plan**").
- 19. Following the approval of the CCAA Plan, Representative Counsel's work included the following:
 - (a) advising the Representatives regarding the September 2019 interim distribution paid to creditors, including to the Salaried Members with respect to their claims for terminated OPEBs, and responding to questions from Salaried Members regarding their distributions, individual claim amounts and income tax withholdings;
 - (b) advising the Representatives with respect to the distribution to the Salaried Pension Plan, as a result of the Pension Settlement reached in May 2018, and the corresponding decrease to the reduction in monthly pension benefits;

- (c) providing submissions to the Monitor with respect to the tax treatment of certain distribution amounts;
- (d) advising Salaried Members with respect to tax slips sent to the Salaried Members, which reported the distributions for some Salaried Members as taxable income when they were not taxable, and had had no tax withholdings applied at the time of the distribution;
- (e) providing CCAA claim information to Salaried Members to assist with disputing repayment notices from Employment and Social Development Canada ("ESDC"), for Employment Insurance ("EI") that were precipitated by the distribution payments; and
- (f) advising the Salaried Members with respect to the annuity purchase process for pension plan wind-up.

ACTIVITIES OF REPRESENTATIVE COUNSEL DURING THE PERIOD FROM SEPTEMBER 1, 2019 TO MAY 31, 2022

- 20. At the time the fee cap in the September 23, 2019 court Order was determined, it was largely based on the expectation of Representative Counsel that the CCAA proceedings would be substantially completed by around February 28, 2020, as the Wabush CCAA Parties had indicated at paragraphs 58 and 59 of their Motion for the Issuance of an Order Extending the Stay Period dated May 9, 2019. Consequently, the working assumption was that the work required of Representative Counsel to continue to represent and advise the retirees until the termination of the CCAA proceedings would be reducing in that timeframe.
- 21. Since then, however, the CCAA proceedings have continued and there have been Court motions, reports of the Monitor and Court attendances that deal with issues that affect the retirees and their recoveries and in respect of which they request and require advice and representation as they remain creditors still owed amounts in respect of their claims for pension and OPEB losses.
- 22. Representative Counsel's recent work that was largely captured under the fee cap in the Eighth Order for Legal Costs has included attending, advising, and informing the Salaried Members with respect to significant developments not anticipated at the time of the issuance of the said order but that impact the retirees' claims and recoveries, including:
 - (a) the hearing of the Wabush CCAA Parties' Motion for Expansion of the Monitors' Powers, and the motion for leave to appeal by Churchill Falls (Labrador) Corporation Limited ("CFLCo") of the judgment rendered by the Court on such matter on July 14, 2021;
 - (b) the hearing of preliminary matters concerning the Wabush CCAA Parties' Motion for the Winding Up and Dissolution of Twin Falls Power Corporation ("Twin

Falls”), more particularly the contestation by Twin Falls and CFLCo of the jurisdiction of this Court to hear such matter, and the motion for leave to appeal by CFLCo of the judgment rendered by the Court on the said jurisdictional issue on August 12, 2021;

- (c) the hearing of the Monitor's Motion for Directions with respect to set-off and damage payment input tax credits claimed by the Wabush CCAA Parties in respect of payments made to certain creditors in the first interim distribution pursuant to the CCAA Plan (the “**Set-Off Decision**”), and the motion for leave to appeal by Revenue Québec of the Set-Off Decision (leave was granted by Mr. Justice Peter Kalichman, J.A., on December 17, 2021);
 - (d) the hearing of the CCAA Parties’ Motion for Issuance of an Approval and Vesting Order with respect to the Sale of Shares of Twin Falls, further to the settlement concluded in this regard with CFLCo and Twin Falls; and
 - (e) case management conferences with respect to the foregoing motions.
23. In addition, following the second interim distribution pursuant to the CCAA Plan on May 17, 2021, Representative Counsel has dealt with a number of issues, including responding to questions from Salaried Members regarding their distributions, individual claim amounts and income tax withholdings.
24. Further, numerous distribution cheques remained uncashed following the second interim distribution, due to various issues including relocation or death of Salaried Members. Representative Counsel's activities have also included coordinating with the Monitor and the Representatives to ensure delivery of distribution cheques, where possible.
25. Representative Counsel also continues to respond to inquiries from Salaried Members regarding the second interim distribution, and anticipates there will be further inquiries in respect of the final distribution under the CCAA Plan.
26. Representative Counsel submitted its invoices to the Monitor from time to time following the September 23, 2019 Order, which were paid up until the aggregate cap was reached.
27. Representative Counsel continued their work after the fee cap was reached and submitted its invoices to the Monitor from time to time.
28. The fees of Representative Counsel incurred for the period September 1, 2019 to May 31, 2022, is in the aggregate amount of \$52,110.00 in respect of FFMP and \$60,050.00 in respect of KM (plus disbursements and taxes), which amounts include a portion of fees that were incurred that exceed the fee cap, respectively, of \$17,497.50 for FFMP and of \$22,060.00 for KM, and in respect of which the Monitor was made aware.
29. Consequently, Representative Counsel brings this motion for an Order from this Honourable Court directing the payment by the Wabush CCAA Parties of the excess fees of Representative Counsel incurred for the period September 1, 2019 to May 31, 2022, in

the aggregate amount of \$17,497.50 in respect of FFMP and \$22,060.00 in respect of KM (plus disbursements and taxes).

30. The amounts sought in this order for Salaried Members representation and advice described herein have no material impact on the next distribution to creditors.

PROJECTED ACTIVITIES OF REPRESENTATIVE COUNSEL AFTER MAY 31, 2022

31. The future work of Representative Counsel is expected to be limited. Representative Counsel anticipates that it will continue to interact with the Monitor for any additional issues that may arise related to the remaining distribution or distributions, respond to questions to assist the Salaried Members and address any remaining matters in the CCAA proceedings that are relevant to the interests of the Salaried Members, including most notably, the litigation and/or resolution of the appeal of the Set-Off Decision by Revenue Québec before the Québec Court of Appeal, and making oral submissions in such proceedings on behalf of the Salaried Members. The hearing of the appeal of the Set-Off Decision by the Court of Appeal has been scheduled for the week of September 12, 2022.
32. The next and presumably final distribution will not occur until the realization or collection of all material assets of the Wabush CCAA Parties including the input tax credits. As such, the Salaried Members have an obvious interest in closely following the development and progress of these matters, interacting with the Monitor and making submissions to the Court as necessary to support distributions in respect of their claims.
33. It is respectfully submitted that the fee cap for work performed by Representative Counsel in the period June 1, 2022, to the earlier of the discharge of Representative Counsel or the termination of the CCAA proceedings should be \$75,000 (plus disbursements and taxes). This amount is a cap; if less work is involved, then the full amount of the cap would not be utilized.
34. The present Motion is well founded in fact and in law.

FOR THESE REASONS THE PETITIONERS-MISES-EN-CAUSE ASK THAT THIS HONOURABLE COURT:

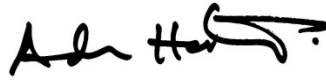
GRANT the present Motion;

ISSUE an Order in the form of the Draft Order communicated herewith as **Exhibit R -1**;

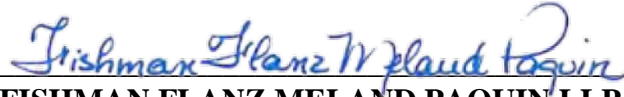
DECLARE that service and notice of this Motion was good and sufficient;

THE WHOLE without costs, save and except in case of contestation.

Toronto and Montreal, June 7, 2022



KOSKIE MINSKY LLP
Andrew J. Hatnay and Sydney Edmonds



FISHMAN FLANZ MELAND PAQUIN LLP
Mark E. Meland and Nicolas Brochu

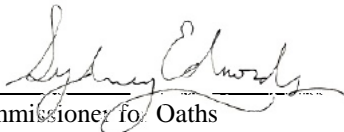
Representative Counsel for the Petitioners-Mises-en-cause Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson, the Representatives of the Salaried Members.

AFFIDAVIT

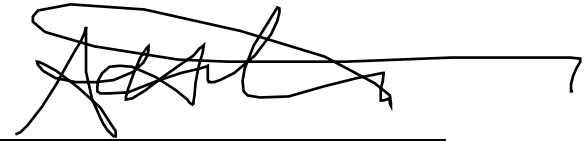
I, the undersigned Andrew Hatnay, carrying on practice at 20 Queen Street West, Suite 900, Toronto, ON M5H 3R3, hereby solemnly declare and make oath and say the following:

1. I am a partner with the firm of Koskie Minsky LLP, the Court-appointed Representative Counsel to all the Salaried Members of the Wabush CCAA Parties;
2. All of the facts alleged in the present *Motion for an Order for Legal Costs of Salaried/Non-Union Employees and Retirees* are true.

SWORN BEFORE ME at Toronto,
in the Province of Ontario,
on June 8, 2022


A Commissioner for Oaths

LSO #: 79946K


ANDREW J. HATNAY

NOTICE OF PRESENTATION

Petitioners-Mise-en-causes' Motion for an Order for Legal Costs of Salaried/Non-Union Employees and Retirees

TO: **Me Bernard Boucher** (bernard.boucher@blakes.com)
 Me Sébastien Guy (sebastien.guy@blakes.com)
 BLAKE, CASSELS & GRAYDON LLP
 600 de Maisonneuve West, Suite 2200
 Montreal, Québec H3A 3J2
 Counsel for the Petitioners and the Mises-en-cause (i.e., Wabush CCAA Parties)

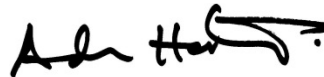
AND TO: **Me Sylvain Rigaud** (srigaud@woods.qc.ca)
 WOODS LLP
 2000, McGill College, Suite #1700
 Montreal, Québec H3A 3H3
 Counsel for the Monitor

AND TO: SERVICE LIST

TAKE NOTICE that the present *Motion for an Order for Legal Costs of Salaried/Non-Union Employees and Retirees* will be presented for adjudication before The Honourable Mr. Justice Michael A. Pinsonnault, J.S.C., or another of the Honourable Justices of the Superior Court, Commercial Division, sitting in and for the district of Montreal, at the Montreal Courthouse located at 1 Notre-Dame Street East, Montreal, Québec, on a date to be determined.

GOVERN YOURSELVES ACCORDINGLY.

Toronto and Montreal, June 8, 2022



KOSKIE MINSKY LLP
Andrew J. Hatnay and Sydney Edmonds



FISHMAN FLANZ MELAND PAQUIN LLP
Mark E. Meland and Nicolas Brochu

Representative Counsel for the Petitioners-Mises-en-cause Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson, the Representatives of the Salaried Members

No.: 500-11-048114-157

**SUPERIOR COURT
DISTRICT OF MONTREAL
(Commercial Division)**

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

BLOOM LAKE GENERAL PARTNER LIMITED & AL.

Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP &
AL.**

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

**MICHAEL KEEPER, TERENCE WATT, DAMIEN LEBEL and NEIL
JOHNSON (as Representatives of the Salaried/Non-Union Employees and
Retirees)**

PETITIONERS-Mises-en-cause

**MOTION FOR AN ORDER FOR LEGAL COSTS OF SALARIED/NON-
UNION EMPLOYEES AND RETIREES, AFFIDAVIT, NOTICE OF
PRESENTATION AND EXHIBIT R-1
(Sections 11 and 11.52 of the *Companies' Creditors Arrangement Act*)**

ORIGINAL

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BM-0309

SUPERIOR COURT
(Commercial division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N^o: 500-11-048114-157

DATE: June 21, 2022

PRESIDING: THE HONOURABLE MICHEL A. PINSONNAULT, J.S.C

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, 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-

FTI CONSULTING CANADA INC.

Monitor

-and-

MICHAEL KEEPER, TERENCE WATT, DAMIEN LEBEL, and NEIL JOHNSON

PETITIONERS-Mises-en-cause

-and-

**UNITED STEELWORKERS, LOCAL 6254, UNITED STEELWORKERS, LOCAL 6285
MORNEAU SHEPELL**
Mises-en-cause

**NINTH ORDER FOR LEGAL COSTS OF SALARIED/NON-UNION EMPLOYEES AND
RETIRES**

- [1] **THE COURT**, upon reading the Petitioners'-Mises-en-cause *Motion for an Order for Legal Costs of Salaried/Non-Union Employees and Retirees* dated June 7, 2022 (the "**Motion**") and having examined the affidavit of Michael Keeper sworn on June 7, 2022;
- [2] **CONSIDERING** the submissions of counsel for the Petitioners-Mises-en-cause (the "**Representatives**"), the submissions of counsel for the Wabush CCAA Parties, the submissions of counsel for the Monitor, the testimony of the Monitor's representative and of the other counsel present;
- [3] **GIVEN** the *Order Appointing Representatives and Representative Counsel* dated June 22, 2015;
- [4] **GIVEN** the *Order for Legal Costs of Salaried/Non-union Employees and Retirees* dated October 28, 2016;
- [5] **GIVEN** the *Third Order for Legal Costs of Salaried/Non-union Employees and Retirees* dated May 31, 2017;
- [6] **GIVEN** the *Fourth Order for Legal Costs of Salaried/Non-union Employees and Retirees* dated June 28, 2017;
- [7] **GIVEN** the *Fifth Order for Future Legal Costs of Salaried/Non-Union Employees and Retirees, and Appointment of Replacement Québec Representative Counsel* dated December 21, 2017;

- [8] **GIVEN** the *Sixth Order for Future Legal Costs of Salaried/Non-Union Employees and Retirees* dated April 16, 2018;
- [9] **GIVEN** the *Seventh Order for Future Legal Costs of Salaried/Non-Union Employees and Retirees* dated June 29, 2018;
- [10] **GIVEN** the *Eighth Order for Future Legal Costs of Salaried/Non-Union Employees and Retirees* dated September 23, 2019; and
- [11] **GIVEN** the provisions of the *Companies' Creditors Arrangement Act*;

FOR THESE REASONS, THE COURT HEREBY:

- [12] **ORDERS** that the Wabush CCAA Parties shall pay the excess legal fees (over and above the fee caps previously ordered) in the amount of **\$22,060.00** for Koskie Minsky LLP, and in the amount of **\$17,497.50** for Fishman Flanz Meland Paquin LLP, plus disbursements and taxes, for work performed by Representative Counsel on behalf of the Salaried Members during the period of September 1, 2019 to May 31, 2022, provided that Representative Counsel shall render sufficiently detailed accounts (subject to reasonable redaction due to solicitor-client privilege) to the Wabush CCAA Parties and subject to the invoices being approved by the Monitor;
- [13] **ORDERS** that the legal fees, taxes and disbursements incurred by Representative Counsel on behalf of the Representatives and Salaried Members for the period from June 1, 2022, to the earlier of the discharge of Representative Counsel or the termination of the CCAA Proceedings shall be paid by the Wabush CCAA Parties up to an aggregate fee cap of **\$75,000** in legal fees, plus disbursements and applicable taxes, provided that Representative Counsel shall render sufficiently detailed accounts (subject to reasonable redaction due to solicitor-client privilege) to the Wabush CCAA Parties and subject to the invoices being approved by the Monitor;

[14] **DIRECTS** that any disagreement regarding the legal fees, disbursements and taxes of the Representative Counsel may be submitted to this Court for determination;

[15] **AUTHORIZES** the Representatives and Representative Counsel to take all steps and to perform all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body and other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto;

[16] **DECLARES** that service and notice of this Motion were good and sufficient and hereby dispenses with further service thereof;

[17] **THE WHOLE** without costs.



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Pinonnault
Date: 2022.06.21
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MICHEL A. PINONNAULT, J.S.C

M^{re} Nicolas Brochu
Fishman Flanz Meland Paquin s.e.n.c.r.l.

Andrew J. Hatnay
Koskie Minsky LLP

Representative Counsel for the Petitioners-Mises en cause Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson, as Representatives of the Salaried Members

Hearing date: June 21, 2022

CANADA

**PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

No.: 500-09-029797-214
(500-11-048114-157)

C O U R T O F A P P E A L

AGENCE DU REVENU DU QUÉBEC

and

CANADA REVENUE AGENCY

Appellants

v.

FTI CONSULTING CANADA INC.

Respondent – Applicant

and

**BLOOM LAKE GENERAL PARTNER
LIMITED ET ALS.**

Mises en cause

and

**QUÉBEC NORTH SHORE & LABRADOR
RAILWAY COMPANY AND IRON
COMPANY OF CANADA**

Mise en cause

and

EMPLOYÉS SALARIÉS NON-SYNDIQUÉS

Mise en cause

APPLICATION TO BE HEARD BY PREFERENCE
Rule 73 of the *Civil Practice Regulation (Court of Appeal)*

TO THE HONOURABLE CHIEF JUSTICE OF THE COURT OF APPEAL, THE APPLICANT FTI CONSULTING CANADA INC. RESPECTFULLY SUBMITS THE FOLLOWING:

I. OVERVIEW

1. By way of this Application, FTI Consulting Canada Inc. (the “**Monitor**”), acting in its capacity as court-appointed monitor overseeing the CCAA Parties’¹ proceedings under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (“**CCAA**”), hereby seeks an order to set an expedited hearing date in respect of this appeal.

2. The Monitor submits that it is in the best interest of justice that this appeal be heard on an expedited basis so that the Monitor may proceed with the (third and) final distribution and seek its discharge and termination of the CCAA proceedings commenced in 2015. Indeed, the Monitor has already reported to the CCAA Court (as defined below) that it only intends to proceed with the next and final distribution once this appeal is finally resolved. As such, the timing of this appeal has an impact on more than 1700 creditors, including approximately 1040 former unionized employees and retirees with claims against the CCAA Parties, and approximately 250 former non-unionized employees and retirees with claims against the CCAA Parties, the whole as more fully described below.

II. RELEVANT FACTS

3. The CCAA Parties owned or operated different aspects of open-pit iron ore mines in Fermont and northern Labrador (Wabush) and a processing and shipping facility in Sept-Îles, Québec. The iron ore would be mined in Fermont and Wabush, and then shipped by rail to Sept-Îles, where it would be further processed and shipped via large lake ships to steelmakers.

4. In 2015, the CCAA Parties obtained protection from their creditors under the CCAA by way of two Initial Orders issued successively on January 27, 2015 (in relation to Bloom

¹ “**CCAA Parties**” means the mis en cause Bloom Lake General Partner Limited, Quinto Mining Corporation, 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.

Lake General Partner Limited, Quinto Mining Corporation, Cliffs Québec Iron Mining ULC, The Bloom Lake Iron Ore Mine Limited Partnership and Bloom Lake Railway Company Limited), and May 20, 2015 (in relation to Wabush Iron Co., Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited) by the Quebec Superior Court, for the judicial district of Montreal sitting in Commercial Division (the “**CCAA Court**”), as part of joint proceedings in court file 500-11-048114-157 (the “**CCAA Proceedings**”).

5. As part of the CCAA Proceedings, notices of rescission or disclaimer were sent by Cliffs Québec Iron Mining ULC (“**CQIM**”) to disclaim contracts (the “**Disclaimed Contracts**”) to four of its creditors (the “**CQIM Creditors**”) pursuant to subsection 32(1) CCAA.
6. Pursuant to subsection 32(7) CCAA, and in accordance with the court-sanctioned Claims Procedure Order², the CQIM Creditors filed claims for the losses they incurred in relation to the Disclaimed Contracts (“**Restructuring Claims**”).
7. Revenu Québec (“**RQ**”), also acting on behalf of the Canada Revenue Agency, filed claims for unpaid GST and QST in the aggregate of approximately \$13M (“**RQ \$13M Claims**”) which was owed by CQIM at the time of commencement of the CCAA Proceedings against it.
8. In June 2018, the proposed plan of compromise and arrangement³ (the “**Plan**”) presented by certain of the CCAA Parties, including CQIM, received court approval. The Monitor commenced the first interim distribution to creditors (“**First Interim Distribution**”) in August 2018, which included partial payment of the CQIM Creditors’ Restructuring Claims (the “**Damage Payments**”). Approximately \$132.4 million was distributed to the CCAA Parties’ creditors as part of the First Interim Distribution.
9. Accordingly, in its sales tax returns for the corresponding reporting period (which ended on November 30, 2018), CQIM claimed input tax credits (“ITCs”) and input tax refunds (“ITRs”) (collectively, the “**Damage Payment ITCs**”), in the aggregate amount of

² Exhibit R-2, Appellants’ Memorandum (“**A.M.**”), vol. 2 at p. 828.

³ Exhibits R-3 and R-4, **A.M.**, vol. 2 at p. 851 and 912.

approximately \$7.5M (“**CQIM \$7.5M Claim**”) for the GST and QST it was deemed to have paid when the Damage Payments were made in August 2018, pursuant to section 182 of the *Excise Tax Act*, RSC 1985, c E-15 (“**ETA**”) and section 318 of the *Act respecting the Québec sales tax*, CQLR c T-0.1 (“**QSTA**”).

10. RQ takes the position that it can operate compensation between the CQIM \$7.5M Claim and the RQ \$13M Claims, as compensation between two debts that arise before an initial order under the CCAA is made (“pre-pre compensation”) is permitted by section 21 CCAA. Subsidiarily, RQ argues that should the CQIM \$7.5 Claim be deemed to be a post-filing claim owing to CQIM, the CCAA Court should have allowed RQ to operate pre-post compensation.
11. On May 17, 2021, the Monitor proceeded with a second interim distribution to the CCAA Parties’ creditors (“**Second Interim Distribution**”). Approximately \$30 million was distributed to the CCAA Parties’ creditors in the Second Interim Distribution. ITCs in the aggregate amount of approximately \$2.7 million have been claimed by the CCAA Parties in respect of distributions on account of Damage Payments in the Second Interim Distribution. These ITCs are also currently being audited and withheld, pending the resolution of this appeal.
12. As of March 31, 2022, the Monitor held roughly \$18 million in cash on behalf of the CCAA Parties, net of unrepresented cheques and uncashed distributions made in the First and Second Interim Distributions. Other than contested tax refunds such as the one central to this appeal, there are no other material receivables or pending disbursements which would significantly increase or decrease the sums available for the third and final distribution to the CCAA Parties’ creditors.

III. PROCEDURAL HISTORY

13. On January 18, 2021, the Monitor filed a motion for directions from the Court (the “**Motion**”) with respect to RQ’s right to operate compensation.
14. On May 14, 2021, RQ filed a contestation to the Monitor’s motion for directions. RQ submitted that the Damage Payment ITCs were pre-filing amounts, and subsidiarily, should

the CQIM \$7.5 Claim be deemed to be a post-filing claim owing to CQIM, that it should be allowed to operate pre-post compensation.

15. On June 18, 2021, the Monitor amended the Motion, as directions were also required from the Court with respect to compensation that RQ purported to effect between \$234,755.16 in other ITCs claimed by CQIM for post-filing supplier invoices (the “**Other Post-Filing ITCs**”).
16. The Motion was heard on August 19 and 20, 2021. The judgment *a quo* was rendered on November 8, 2021 and essentially declared that the CQIM \$7.5M Claim was a post-filing debt which could not be compensated against the pre-filing RQ \$13M Claims. Accordingly, RQ was ordered to pay CQIM roughly \$7.5M in Damage Payment ITCs and \$234,755.16 in Other Post-Filing ITCs.
17. On November 29, 2021, RQ sought leave to appeal the judgment *a quo*. Leave to appeal was not contested by the Monitor, which specifically stated that should leave be granted that it was critical that the appeal be heard on an expedited basis so as not to delay the timing of the third and final distribution to the creditors.
18. Leave to appeal was granted on December 17, 2021, by this Court. In addition, an expedited and simplified time-schedule for the filing of memoranda was set as follows:
 - a. The Appellants (RQ, also acting on behalf of the Canada Revenue Agency) were ordered to file a single memorandum, not to exceed 30 pages, no later than February 18, 2022;
 - b. The Respondent (Monitor) and mises en cause CCAA Parties were ordered to file their respective memoranda, not to exceed 30 pages, no later than April 1, 2022;
 - c. The mises en cause Quebec North Shore & Labrador Railway Company and Iron Company of Canada (“**QNS&L**”) and Employés Salariés Non-Syndiqués were each allowed to file memoranda, not to exceed 10 and 5 pages respectively, no later than April 1, 2022.

19. As of April 1, 2022, all parties had filed their respective memoranda, save for the mise en cause Employés Salariés Non-Syndiqués who ultimately elected not to make any written submissions. As such, this appeal is now ready to be heard and a hearing date can now be fixed.
20. The total time requested for oral arguments by the parties is 200 minutes and is broken down as follows:
 - a. Appellants (RQ, also acting on behalf of the Canada Revenue Agency): 90 minutes;
 - b. Respondent (Monitor): 45 minutes;
 - c. Mises en cause (CCAA Parties): 45 minutes;
 - d. Mise en cause (QNS&L): 15 minutes;
 - e. Mise en cause (Employés Salariés Non-Syndiqués): 5 minutes.

IV. GROUNDS FOR ORDER SOUGHT

21. The third and final distribution to the CCAA Parties' creditors is dependent on the resolution of this appeal, as the Monitor has already reported to the CCAA Court that it will not proceed with a further interim distribution.
22. The CCAA Parties' creditors include approximately 1040 former unionized employees and retirees and 250 former non-unionized employees and retirees with claims against the CCAA Parties.
23. The vast majority of the former employee and retirees are elderly individuals. They have suffered reductions in their monthly pension benefits because of their pension plans' underfunding at the time of commencement of CCAA Proceedings and subsequent termination, as well as the termination of their supplemental post-employment benefits and payments ("OPEBs"). The CCAA Court has appointed representative counsel to represent the former salaried employee and retirees which were considered as vulnerable creditors.
24. While it is undisputed that "jumping the queue" may cause some prejudice to other

litigants, here, the Monitor is acting in the interest of more than 1700 creditors, including an important group of vulnerable individuals.

25. Finally, this Application is uncontested and will not prejudice any of the parties to this appeal.
26. Given the above, the Monitor respectfully submits that is the best interest of justice that this Honourable Court exercise its discretion and allow this appeal to be heard by preference.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the *Application to be heard by preference*;

FIX a hearing to be heard by preference for a total duration of 200 minutes (90 minutes for the Appellants, 45 minutes for the Respondent, 45 minutes for the mises en cause CCAA Parties, 15 minutes for the mise en cause Quebec North Shore & Labrador Railway Company and Iron Company of Canada, and 5 minutes for the mises en cause Employés Salariés Non Syndiqués), or, alternately, **DEFER** the file to the Master of the Rolls to schedule such a hearing by preference;

THE WHOLE without costs.

MONTREAL, April 8, 2022

Woods s.e.n.c.r.l./LLP

Woods LLP

Lawyers for FTI Consulting Canada Inc.

Mtre. Sylvain Rigaud

Mtre. Bogdan-Alexandru Dobrota

Mtre. Joshua Bouzaglou

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2000 McGill College Avenue, Suite 1700

Montréal, Québec H3A 3H3

Tel.: 514 982-4545 / Fax: 514 284-2046

Code BW 0208 / Our File: 5956-4

AFFIDAVIT

I, the undersigned, Nigel Meakin, Senior Managing Director of FTI Consulting Canada Inc., acting in its capacity as Monitor to the CCAA Parties in these proceedings, having a place of business at 79 Wellington Street West, Suite 2010 in Toronto, Ontario, M5J 2N7 solemnly affirm:

1. I am a representative of FTI Consulting Canada Inc.;
2. All the facts alleged in this Application are true.

AND I HAVE SIGNED:



NIGEL MEAKIN

Solemnly affirmed before me in Montreal by
videoconference this 8th day of April 2022



Commissioner for Oaths

NOTICE OF PRESENTATION

To: Mtres. Daniel Cantin, Jean-Claude Gaudette and Henrick Lavoie

LARIVIÈRE MEUNIER (REVENU QUÉBEC)

danielcantin@revenuquebec.ca, jean-claude.gaudette@revenuquebec.ca,
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Lawyers for the Appellants Agence du Revenu du Québec and Canada Revenue Agency

Mtres. Bernard Boucher and Youssef Kabbaj

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Lawyers for the Mises en cause CCAA Parties

Mtre. Gerry Apostolatos

LANGLOIS LAWYERS LLP

gerry.apostolatos@langlois.ca

*Lawyers for the Mis en cause Québec North Shore and Labrador Railway Company Inc.
and Iron Ore Company of Canada*

Mtre. Nicolas Brochu

FISHMAN FLANZ MELAND PAQUIN LLP

nbrochu@ffmp.ca

Lawyers for the Mis en cause Employés Salariés Non-Syndiqués

TAKE NOTICE that the present *Application to be heard by preference* will be presented for adjudication before the Chief Justice or one of the Honourable Judges of the Court of Appeal designated by the Chief Justice sitting in the Ernest-Cormier Building, located at 100, Notre-Dame Street East, in Montreal, on a date to be determined by them, in room **RC-18**, at **9:30** or so soon thereafter as counsel may be heard.

MONTREAL, April 8, 2022

Woods s.e.n.c.r.l./LLP

Woods LLP

Lawyers for FTI Consulting Canada Inc.

Mtre. Sylvain Rigaud

Mtre. Bogdan-Alexandru Dobrota

Mtre. Joshua Bouzaglou

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Tel.: 514 982-4545 / Fax: 514 284-2046

Code BW 0208 / Our File: 5956-4

No : 500-09-029797-214
(500-11-048114-157)

**COURT OF APPEAL
DISTRICT OF MONTRÉAL
PROVINCE OF QUÉBEC**

AGENCE DU REVENU DU QUÉBEC

and

CANADA REVENUE AGENCY

Appellants

V.

FTI CONSULTING CANADA INC.

Respondent - Applicant

and

**BLOOM LAKE GENERAL PARTNER LIMITED, ET
ALS.**

Mises-en-cause

and

**QUÉBEC NORTH SHORE & LABRADOR RAILWAY
COMPANY AND IRON COMPANY OF CANADA**

and

EMPLOYÉS SALARIÉS NON-SYNDIQUÉS

Mise en cause

APPLICATION TO BE HEARD BY PREFERENCE
Rule 73 of the Civil Practice Regulation (Court of Appeal)

ORIGINAL

Mtre. Sylvain Rigaud

Mtre. Bogdan-Alexandru Dobrota

Mtre. Joshua -Bouzaglou

File no.: 5956-4

Woods s.e.n.c.r.l./LLP

Avocats / Barristers & Solicitors
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Code BW 0208



COUR D'APPEL

CANADA
PROVINCE DE QUÉBEC
GREFFE DE MONTRÉAL

N° : 500-09-029797-214
(500-11-048114-157)

JUGEMENT

DATE : Le 16 mai 2022

L'HONORABLE MANON SAVARD, J.c.Q.

PARTIES APPELANTES	AVOCATS
AGENCE DU REVENU DU QUÉBEC AGENCE DU REVENU DU CANADA	Me DANIEL CANTIN Me JEAN-CLAUDE GAUDETTE Me HENRICK LAVOIE (<i>Larivière Meunier</i>) Absents
PARTIE INTIMÉE	AVOCATS
FTI CONSULTING CANADA INC.	Me SYLVAIN RIGAUD Me BOGDAN-ALEXANDRU DOBROTA Me JOSHUA BOUZAGLOU (<i>Woods LLP</i>) Absents
PARTIES MISES EN CAUSE	AVOCATS
BLOOM LAKE GENERAL PARTNER LIMITED QUINTO MINING CORPORATION CQIM 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 WABUSH LAKE RAILWAY COMPANY LIMITED	Me BERNARD BOUCHER Me YOUSSEF KABBAJ (<i>Blakes, Cassels & Graydon LLP</i>) Absents

QUÉBEC NORTH SHORE & LABRADOR RAILWAY COMPANY IRON ORE COMPANY OF CANADA	Me GERRY APOSTOLATOS <i>(Langlois Avocats LLP)</i> Absents
EMPLOYÉS SALARIÉS NON SYNDIQUÉS	Me NICOLAS BROCHU <i>(Fishman Flanz Meland Paquin s.e.n.c.r.l.)</i> Absent
8568391 CANADA LIMITED	ABSENTE ET NON REPRÉSENTÉE

DESCRIPTION : **Requête pour mise au rôle par préférence** (Article 73 des Règles de la Cour d'appel du Québec en matière civile).

Greffier-audencier : --

Salle : --

JUGEMENT

- [1] Vu la requête et ses allégations;
- [2] Vu le consentement des parties;
- [3] Vu la nature de l'appel et des enjeux découlant de celui-ci;
- [4] J'estime, pour une saine gestion des dossiers de la Cour, qu'il y a lieu de faire droit à la demande.

POUR CES MOTIFS, LA SOUSSIGNÉE :

- [5] **ACCUEILLE** la requête, sans frais de justice;
- [6] **DÉFÈRE** le dossier au Maître des rôles afin que l'audition du pourvoi soit fixée au cours de la semaine du 12 septembre prochain, en salle Lamer, pour une durée de **200 minutes (90 minutes** pour les appelantes; **45 minutes** pour l'intimée; et pour les mises en cause : **45 minutes** pour Bloom Lake General Partner Limited et al.; **15 minutes** North Shore & Labrador Railway Company and Iron Company of Canada et **5 minutes** les Employés salariés non syndiqués).



MANON SAVARD, J.c.Q.

SUPERIOR COURT
(Commercial division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N^o: 500-11-048114-157

DATE: June 21, 2022

PRESIDING: THE HONOURABLE MICHEL A. PINSONNAULT, J.S.C

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, 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-

FTI CONSULTING CANADA INC.

Monitor

-and-

MICHAEL KEEPER, TERENCE WATT, DAMIEN LEBEL, and NEIL JOHNSON

PETITIONERS-Mises-en-cause

-and-

**UNITED STEELWORKERS, LOCAL 6254, UNITED STEELWORKERS, LOCAL 6285
MORNEAU SHEPELL**
Mises-en-cause

**NINTH ORDER FOR LEGAL COSTS OF SALARIED/NON-UNION EMPLOYEES AND
RETIRES**

- [1] **THE COURT**, upon reading the Petitioners'-Mises-en-cause *Motion for an Order for Legal Costs of Salaried/Non-Union Employees and Retirees* dated June 7, 2022 (the "**Motion**") and having examined the affidavit of Michael Keeper sworn on June 7, 2022;
- [2] **CONSIDERING** the submissions of counsel for the Petitioners-Mises-en-cause (the "**Representatives**"), the submissions of counsel for the Wabush CCAA Parties, the submissions of counsel for the Monitor, the testimony of the Monitor's representative and of the other counsel present;
- [3] **GIVEN** the *Order Appointing Representatives and Representative Counsel* dated June 22, 2015;
- [4] **GIVEN** the *Order for Legal Costs of Salaried/Non-union Employees and Retirees* dated October 28, 2016;
- [5] **GIVEN** the *Third Order for Legal Costs of Salaried/Non-union Employees and Retirees* dated May 31, 2017;
- [6] **GIVEN** the *Fourth Order for Legal Costs of Salaried/Non-union Employees and Retirees* dated June 28, 2017;
- [7] **GIVEN** the *Fifth Order for Future Legal Costs of Salaried/Non-Union Employees and Retirees, and Appointment of Replacement Québec Representative Counsel* dated December 21, 2017;

- [8] **GIVEN** the *Sixth Order for Future Legal Costs of Salaried/Non-Union Employees and Retirees* dated April 16, 2018;
- [9] **GIVEN** the *Seventh Order for Future Legal Costs of Salaried/Non-Union Employees and Retirees* dated June 29, 2018;
- [10] **GIVEN** the *Eighth Order for Future Legal Costs of Salaried/Non-Union Employees and Retirees* dated September 23, 2019; and
- [11] **GIVEN** the provisions of the *Companies' Creditors Arrangement Act*;

FOR THESE REASONS, THE COURT HEREBY:

- [12] **ORDERS** that the Wabush CCAA Parties shall pay the excess legal fees (over and above the fee caps previously ordered) in the amount of **\$22,060.00** for Koskie Minsky LLP, and in the amount of **\$17,497.50** for Fishman Flanz Meland Paquin LLP, plus disbursements and taxes, for work performed by Representative Counsel on behalf of the Salaried Members during the period of September 1, 2019 to May 31, 2022, provided that Representative Counsel shall render sufficiently detailed accounts (subject to reasonable redaction due to solicitor-client privilege) to the Wabush CCAA Parties and subject to the invoices being approved by the Monitor;
- [13] **ORDERS** that the legal fees, taxes and disbursements incurred by Representative Counsel on behalf of the Representatives and Salaried Members for the period from June 1, 2022, to the earlier of the discharge of Representative Counsel or the termination of the CCAA Proceedings shall be paid by the Wabush CCAA Parties up to an aggregate fee cap of **\$75,000** in legal fees, plus disbursements and applicable taxes, provided that Representative Counsel shall render sufficiently detailed accounts (subject to reasonable redaction due to solicitor-client privilege) to the Wabush CCAA Parties and subject to the invoices being approved by the Monitor;

[14] **DIRECTS** that any disagreement regarding the legal fees, disbursements and taxes of the Representative Counsel may be submitted to this Court for determination;

[15] **AUTHORIZES** the Representatives and Representative Counsel to take all steps and to perform all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body and other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto;

[16] **DECLARES** that service and notice of this Motion were good and sufficient and hereby dispenses with further service thereof;

[17] **THE WHOLE** without costs.



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by Michel A.
Pinonnault
Date: 2022.06.21
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MICHEL A. PINONNAULT, J.S.C

M^{re} Nicolas Brochu
Fishman Flanz Meland Paquin s.e.n.c.r.l.

Andrew J. Hatnay
Koskie Minsky LLP

Representative Counsel for the Petitioners-Mises en cause Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson, as Representatives of the Salaried Members

Hearing date: June 21, 2022

CANADA

**PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

No.: 500-09-029797-214
(500-11-048114-157)

C O U R T O F A P P E A L

AGENCE DU REVENU DU QUÉBEC

and

CANADA REVENUE AGENCY

Appellants

v.

FTI CONSULTING CANADA INC.

Respondent – Applicant

and

**BLOOM LAKE GENERAL PARTNER
LIMITED ET ALS.**

Mises en cause

and

**QUÉBEC NORTH SHORE & LABRADOR
RAILWAY COMPANY AND IRON
COMPANY OF CANADA**

Mise en cause

and

EMPLOYÉS SALARIÉS NON-SYNDIQUÉS

Mise en cause

APPLICATION TO BE HEARD BY PREFERENCE
Rule 73 of the Civil Practice Regulation (Court of Appeal)

TO THE HONOURABLE CHIEF JUSTICE OF THE COURT OF APPEAL, THE APPLICANT FTI CONSULTING CANADA INC. RESPECTFULLY SUBMITS THE FOLLOWING:

I. OVERVIEW

1. By way of this Application, FTI Consulting Canada Inc. (the “**Monitor**”), acting in its capacity as court-appointed monitor overseeing the CCAA Parties’¹ proceedings under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (“**CCAA**”), hereby seeks an order to set an expedited hearing date in respect of this appeal.
2. The Monitor submits that it is in the best interest of justice that this appeal be heard on an expedited basis so that the Monitor may proceed with the (third and) final distribution and seek its discharge and termination of the CCAA proceedings commenced in 2015. Indeed, the Monitor has already reported to the CCAA Court (as defined below) that it only intends to proceed with the next and final distribution once this appeal is finally resolved. As such, the timing of this appeal has an impact on more than 1700 creditors, including approximately 1040 former unionized employees and retirees with claims against the CCAA Parties, and approximately 250 former non-unionized employees and retirees with claims against the CCAA Parties, the whole as more fully described below.

II. RELEVANT FACTS

3. The CCAA Parties owned or operated different aspects of open-pit iron ore mines in Fermont and northern Labrador (Wabush) and a processing and shipping facility in Sept-Îles, Québec. The iron ore would be mined in Fermont and Wabush, and then shipped by rail to Sept-Îles, where it would be further processed and shipped via large lake ships to steelmakers.
4. In 2015, the CCAA Parties obtained protection from their creditors under the CCAA by way of two Initial Orders issued successively on January 27, 2015 (in relation to Bloom

¹ “**CCAA Parties**” means the mis en cause Bloom Lake General Partner Limited, Quinto Mining Corporation, 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.

Lake General Partner Limited, Quinto Mining Corporation, Cliffs Québec Iron Mining ULC, The Bloom Lake Iron Ore Mine Limited Partnership and Bloom Lake Railway Company Limited), and May 20, 2015 (in relation to Wabush Iron Co., Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited) by the Quebec Superior Court, for the judicial district of Montreal sitting in Commercial Division (the “**CCAA Court**”), as part of joint proceedings in court file 500-11-048114-157 (the “**CCAA Proceedings**”).

5. As part of the CCAA Proceedings, notices of rescission or disclaimer were sent by Cliffs Québec Iron Mining ULC (“**CQIM**”) to disclaim contracts (the “**Disclaimed Contracts**”) to four of its creditors (the “**CQIM Creditors**”) pursuant to subsection 32(1) CCAA.
6. Pursuant to subsection 32(7) CCAA, and in accordance with the court-sanctioned Claims Procedure Order², the CQIM Creditors filed claims for the losses they incurred in relation to the Disclaimed Contracts (“**Restructuring Claims**”).
7. Revenu Québec (“**RQ**”), also acting on behalf of the Canada Revenue Agency, filed claims for unpaid GST and QST in the aggregate of approximately \$13M (“**RQ \$13M Claims**”) which was owed by CQIM at the time of commencement of the CCAA Proceedings against it.
8. In June 2018, the proposed plan of compromise and arrangement³ (the “**Plan**”) presented by certain of the CCAA Parties, including CQIM, received court approval. The Monitor commenced the first interim distribution to creditors (“**First Interim Distribution**”) in August 2018, which included partial payment of the CQIM Creditors’ Restructuring Claims (the “**Damage Payments**”). Approximately \$132.4 million was distributed to the CCAA Parties’ creditors as part of the First Interim Distribution.
9. Accordingly, in its sales tax returns for the corresponding reporting period (which ended on November 30, 2018), CQIM claimed input tax credits (“ITCs”) and input tax refunds (“ITRs”) (collectively, the “**Damage Payment ITCs**”), in the aggregate amount of

² Exhibit R-2, Appellants’ Memorandum (“**A.M.**”), vol. 2 at p. 828.

³ Exhibits R-3 and R-4, **A.M.**, vol. 2 at p. 851 and 912.

approximately \$7.5M (“**CQIM \$7.5M Claim**”) for the GST and QST it was deemed to have paid when the Damage Payments were made in August 2018, pursuant to section 182 of the *Excise Tax Act*, RSC 1985, c E-15 (“**ETA**”) and section 318 of the *Act respecting the Québec sales tax*, CQLR c T-0.1 (“**QSTA**”).

10. RQ takes the position that it can operate compensation between the CQIM \$7.5M Claim and the RQ \$13M Claims, as compensation between two debts that arise before an initial order under the CCAA is made (“pre-pre compensation”) is permitted by section 21 CCAA. Subsidiarily, RQ argues that should the CQIM \$7.5 Claim be deemed to be a post-filing claim owing to CQIM, the CCAA Court should have allowed RQ to operate pre-post compensation.
11. On May 17, 2021, the Monitor proceeded with a second interim distribution to the CCAA Parties’ creditors (“**Second Interim Distribution**”). Approximately \$30 million was distributed to the CCAA Parties’ creditors in the Second Interim Distribution. ITCs in the aggregate amount of approximately \$2.7 million have been claimed by the CCAA Parties in respect of distributions on account of Damage Payments in the Second Interim Distribution. These ITCs are also currently being audited and withheld, pending the resolution of this appeal.
12. As of March 31, 2022, the Monitor held roughly \$18 million in cash on behalf of the CCAA Parties, net of unrepresented cheques and uncashed distributions made in the First and Second Interim Distributions. Other than contested tax refunds such as the one central to this appeal, there are no other material receivables or pending disbursements which would significantly increase or decrease the sums available for the third and final distribution to the CCAA Parties’ creditors.

III. PROCEDURAL HISTORY

13. On January 18, 2021, the Monitor filed a motion for directions from the Court (the “**Motion**”) with respect to RQ’s right to operate compensation.
14. On May 14, 2021, RQ filed a contestation to the Monitor’s motion for directions. RQ submitted that the Damage Payment ITCs were pre-filing amounts, and subsidiarily, should

the CQIM \$7.5 Claim be deemed to be a post-filing claim owing to CQIM, that it should be allowed to operate pre-post compensation.

15. On June 18, 2021, the Monitor amended the Motion, as directions were also required from the Court with respect to compensation that RQ purported to effect between \$234,755.16 in other ITCs claimed by CQIM for post-filing supplier invoices (the “**Other Post-Filing ITCs**”).
16. The Motion was heard on August 19 and 20, 2021. The judgment *a quo* was rendered on November 8, 2021 and essentially declared that the CQIM \$7.5M Claim was a post-filing debt which could not be compensated against the pre-filing RQ \$13M Claims. Accordingly, RQ was ordered to pay CQIM roughly \$7.5M in Damage Payment ITCs and \$234,755.16 in Other Post-Filing ITCs.
17. On November 29, 2021, RQ sought leave to appeal the judgment *a quo*. Leave to appeal was not contested by the Monitor, which specifically stated that should leave be granted that it was critical that the appeal be heard on an expedited basis so as not to delay the timing of the third and final distribution to the creditors.
18. Leave to appeal was granted on December 17, 2021, by this Court. In addition, an expedited and simplified time-schedule for the filing of memoranda was set as follows:
 - a. The Appellants (RQ, also acting on behalf of the Canada Revenue Agency) were ordered to file a single memorandum, not to exceed 30 pages, no later than February 18, 2022;
 - b. The Respondent (Monitor) and mises en cause CCAA Parties were ordered to file their respective memoranda, not to exceed 30 pages, no later than April 1, 2022;
 - c. The mises en cause Quebec North Shore & Labrador Railway Company and Iron Company of Canada (“**QNS&L**”) and Employés Salariés Non-Syndiqués were each allowed to file memoranda, not to exceed 10 and 5 pages respectively, no later than April 1, 2022.

19. As of April 1, 2022, all parties had filed their respective memoranda, save for the mise en cause Employés Salariés Non-Syndiqués who ultimately elected not to make any written submissions. As such, this appeal is now ready to be heard and a hearing date can now be fixed.
20. The total time requested for oral arguments by the parties is 200 minutes and is broken down as follows:
 - a. Appellants (RQ, also acting on behalf of the Canada Revenue Agency): 90 minutes;
 - b. Respondent (Monitor): 45 minutes;
 - c. Mises en cause (CCAA Parties): 45 minutes;
 - d. Mise en cause (QNS&L): 15 minutes;
 - e. Mise en cause (Employés Salariés Non-Syndiqués): 5 minutes.

IV. GROUNDS FOR ORDER SOUGHT

21. The third and final distribution to the CCAA Parties' creditors is dependent on the resolution of this appeal, as the Monitor has already reported to the CCAA Court that it will not proceed with a further interim distribution.
22. The CCAA Parties' creditors include approximately 1040 former unionized employees and retirees and 250 former non-unionized employees and retirees with claims against the CCAA Parties.
23. The vast majority of the former employee and retirees are elderly individuals. They have suffered reductions in their monthly pension benefits because of their pension plans' underfunding at the time of commencement of CCAA Proceedings and subsequent termination, as well as the termination of their supplemental post-employment benefits and payments ("OPEBs"). The CCAA Court has appointed representative counsel to represent the former salaried employee and retirees which were considered as vulnerable creditors.
24. While it is undisputed that "jumping the queue" may cause some prejudice to other

litigants, here, the Monitor is acting in the interest of more than 1700 creditors, including an important group of vulnerable individuals.

25. Finally, this Application is uncontested and will not prejudice any of the parties to this appeal.
26. Given the above, the Monitor respectfully submits that is the best interest of justice that this Honourable Court exercise its discretion and allow this appeal to be heard by preference.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the *Application to be heard by preference*;

FIX a hearing to be heard by preference for a total duration of 200 minutes (90 minutes for the Appellants, 45 minutes for the Respondent, 45 minutes for the mises en cause CCAA Parties, 15 minutes for the mise en cause Quebec North Shore & Labrador Railway Company and Iron Company of Canada, and 5 minutes for the mises en cause Employés Salariés Non Syndiqués), or, alternately, **DEFER** the file to the Master of the Rolls to schedule such a hearing by preference;

THE WHOLE without costs.

MONTREAL, April 8, 2022

Woods s.e.n.c.r.l./LLP

Woods LLP

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Code BW 0208 / Our File: 5956-4

AFFIDAVIT

I, the undersigned, Nigel Meakin, Senior Managing Director of FTI Consulting Canada Inc., acting in its capacity as Monitor to the CCAA Parties in these proceedings, having a place of business at 79 Wellington Street West, Suite 2010 in Toronto, Ontario, M5J 2N7 solemnly affirm:

1. I am a representative of FTI Consulting Canada Inc.;
2. All the facts alleged in this Application are true.

AND I HAVE SIGNED:



NIGEL MEAKIN

Solemnly affirmed before me in Montreal by
videoconference this 8th day of April 2022



Commissioner for Oaths

NOTICE OF PRESENTATION

To: Mtres. Daniel Cantin, Jean-Claude Gaudette and Henrick Lavoie

LARIVIÈRE MEUNIER (REVENU QUÉBEC)

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Lawyers for the Mis en cause Employés Salariés Non-Syndiqués

TAKE NOTICE that the present *Application to be heard by preference* will be presented for adjudication before the Chief Justice or one of the Honourable Judges of the Court of Appeal designated by the Chief Justice sitting in the Ernest-Cormier Building, located at 100, Notre-Dame Street East, in Montreal, on a date to be determined by them, in room **RC-18**, at **9:30** or so soon thereafter as counsel may be heard.

MONTREAL, April 8, 2022

Woods s.e.n.c.r.l./LLP

Woods LLP

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Code BW 0208 / Our File: 5956-4

No : 500-09-029797-214
(500-11-048114-157)

**COURT OF APPEAL
DISTRICT OF MONTRÉAL
PROVINCE OF QUÉBEC**

AGENCE DU REVENU DU QUÉBEC

and

CANADA REVENUE AGENCY

Appellants

V.

FTI CONSULTING CANADA INC.

Respondent - Applicant

and

**BLOOM LAKE GENERAL PARTNER LIMITED, ET
ALS.**

Mises-en-cause

and

**QUÉBEC NORTH SHORE & LABRADOR RAILWAY
COMPANY AND IRON COMPANY OF CANADA**

and

EMPLOYÉS SALARIÉS NON-SYNDIQUÉS

Mise en cause

APPLICATION TO BE HEARD BY PREFERENCE
Rule 73 of the Civil Practice Regulation (Court of Appeal)

ORIGINAL

Mtre. Sylvain Rigaud

Mtre. Bogdan-Alexandru Dobrota

Mtre. Joshua -Bouzaglou

File no.: 5956-4

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Code BW 0208



COUR D'APPEL

CANADA
PROVINCE DE QUÉBEC
GREFFE DE MONTRÉAL

N° : 500-09-029797-214
(500-11-048114-157)

JUGEMENT

DATE : Le 16 mai 2022

L'HONORABLE MANON SAVARD, J.c.Q.

PARTIES APPELANTES	AVOCATS
AGENCE DU REVENU DU QUÉBEC AGENCE DU REVENU DU CANADA	Me DANIEL CANTIN Me JEAN-CLAUDE GAUDETTE Me HENRICK LAVOIE <i>(Larivière Meunier)</i> Absents
PARTIE INTIMÉE	AVOCATS
FTI CONSULTING CANADA INC.	Me SYLVAIN RIGAUD Me BOGDAN-ALEXANDRU DOBROTA Me JOSHUA BOUZAGLOU <i>(Woods LLP)</i> Absents
PARTIES MISES EN CAUSE	AVOCATS
BLOOM LAKE GENERAL PARTNER LIMITED QUINTO MINING CORPORATION CQIM 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 WABUSH LAKE RAILWAY COMPANY LIMITED	Me BERNARD BOUCHER Me YOUSSEF KABBAJ <i>(Blakes, Cassels & Graydon LLP)</i> Absents

QUÉBEC NORTH SHORE & LABRADOR RAILWAY COMPANY IRON ORE COMPANY OF CANADA	Me GERRY APOSTOLATOS <i>(Langlois Avocats LLP)</i> Absents
EMPLOYÉS SALARIÉS NON SYNDIQUÉS	Me NICOLAS BROCHU <i>(Fishman Flanz Meland Paquin s.e.n.c.r.l.)</i> Absent
8568391 CANADA LIMITED	ABSENTE ET NON REPRÉSENTÉE

DESCRIPTION : **Requête pour mise au rôle par préférence** (Article 73 des Règles de la Cour d'appel du Québec en matière civile).

Greffier-audencier : --

Salle : --

JUGEMENT

- [1] Vu la requête et ses allégations;
- [2] Vu le consentement des parties;
- [3] Vu la nature de l'appel et des enjeux découlant de celui-ci;
- [4] J'estime, pour une saine gestion des dossiers de la Cour, qu'il y a lieu de faire droit à la demande.

POUR CES MOTIFS, LA SOUSSIGNÉE :

- [5] **ACCUEILLE** la requête, sans frais de justice;
- [6] **DÉFÈRE** le dossier au Maître des rôles afin que l'audition du pourvoi soit fixée au cours de la semaine du 12 septembre prochain, en salle Lamer, pour une durée de **200 minutes (90 minutes** pour les appelantes; **45 minutes** pour l'intimée; et pour les mises en cause : **45 minutes** pour Bloom Lake General Partner Limited et al.; **15 minutes** North Shore & Labrador Railway Company and Iron Company of Canada et **5 minutes** les Employés salariés non syndiqués).


MANON SAVARD, J.c.Q.
