

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-11-048114-157

SUPERIOR COURT  
(Commercial Division)

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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 QUEBEC  
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

Mises-en-cause

-and-

MORNEAU SHEPELL  
Mise-en-cause

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**SUBMISSIONS OF MORNEAU SHEPELL, IN ITS CAPACITY AS THE REPLACEMENT  
PENSION PLAN ADMINISTRATOR, IN RESPONSE TO THE MONITOR'S MOTION FOR  
DIRECTIONS WITH RESPECT TO PENSION CLAIMS**  
(Sections 11, 17 and 23(k) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36)

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TO THE HONOURABLE MR. JUSTICE STEPHEN W. HAMILTON, J.S.C., OR TO ONE OF THE HONOURABLE JUDGES SITTING IN THE COMMERCIAL DIVISION IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE OBJECTING PARTY-MISES-EN-CAUSE RESPECTFULLY SUBMIT THE FOLLOWING:

**OVERVIEW**

1. The Monitor made a Motion for Directions with respect to certain issues concerning the Pension Claims filed by pursuant to the Claims Procedure. Morneau Shepell, in its capacity as Replacement Pension Plan Administrator, objected to the Motion on the grounds that it seeks to adjudicate the Pension Claims by a procedure that is not in accordance with the Amended Claims Procedure Order, and which has not been consented to. The Replacement Pension Plan Administrator also stated that it did not agree with the facts asserted by the Monitor in its Motion, or with the characterization of the issues in relation to the Pension Claims.
  
2. These are the submissions of the Replacement Pension Plan Administrator further to the Court's directions with respect to defining the issues to be determined in relation to the statutory deemed trusts under the Newfoundland and Labrador *Pension Benefits Act* ("NL *PBA*"), and the question of whether certain issues relating to the interpretation and application of NL *PBA* should be referred for determination to the Supreme Court of Newfoundland and Labrador (the "NL Court").

3. The Monitor's Motion for Directions notes that the adjudication of the Pension Claims raises questions concerning the interpretation of the deemed trust provisions in s. 32 of the NL *PBA* and their application to the Pension Claims. For example, the Monitor's Motion asks: What is the proper meaning of "liquidation" pursuant to ss. 32(2) of the NL *PBA*? Has a "liquidation" occurred? Could the full amount of the deficit in a defined benefit plan be subject to a deemed trust under the NL *PBA*? Is the deemed trust under the NL *PBA* applicable to assets located outside of Newfoundland and Labrador?
4. The Replacement Pension Plan Administrator agrees that the Pension Claims raise issues concerning the interpretation, scope, and application of s. 32 of the NL *PBA*, and submits that these issues should be referred for determination to the NL Court. These issues include those relating to the meaning and application of the term "liquidation" in ss. 32(2), and the Monitor's question as to whether the deemed trust under the NL *PBA* is applicable to assets located outside of Newfoundland and Labrador. In contrast, any questions concerning the effectiveness or priority of any deemed trusts in the *CCAA* proceedings are matters for this Court.

#### **PART I: THE FACTS**

5. The Replacement Pension Plan Administrator has had the opportunity to review the Factum of the Representatives of the Salaried Employees and Retirees and agrees with and adopts the facts as stated in that Factum, but adds the following.

6. Section 12.06 of the both the Salaried Plan and the Union Plan state as follows: “The Plan shall be interpreted pursuant to the laws applicable in the province of Newfoundland.”
7. The Union Plan also In addition to retirees under the Wabush Salaried Plan having their monthly pensions reduced by 25%, retirees under the Union Plan had their monthly pensions reduced by 21% on March 1, 2016 as a result of the Plan’s underfunded status.

## **PART II: ISSUES**

8. The issue before the Court is: Should the interpretation and application of s. 32 of the NL *PBA* to the Pension Claims be referred for determination to the NL Court? It is submitted that the answer is “yes”.

## **PART III: LAW AND ARGUMENT**

9. The Replacement Pension Plan Administrator has had the opportunity to review the Factum of the Representatives of the Salaried Employees and Retirees and agrees with and adopts the law and arguments as stated in that Factum, adding or emphasizing the following points.
10. The scope and application of s. 32 of the NL *PBA* in this case is a matter of interpretation in the first instance. There is no jurisprudence on the scope and interpretation of s. 32 that the Parties can refer to or rely on. This raises difficult questions about how questions of Newfoundland and Labrador law with respect to s. 32 can be proven in this Court.

11. The interpretation of s. 32 of the NL *PBA* is a question of the intention of the Newfoundland and Labrador House of Assembly. It is submitted that the NL Court is better situated to determine this intention.
12. Lastly, s. 32 of the NL *PBA* is not restricted to situations where an employer is insolvent. The interpretation of s. 32 applies to all pension plans registered in Newfoundland and Labrador, and has implications for the rights of all pension plan members and beneficiaries whose pension entitlements and rights are subject to the NL *PBA*. The deemed trusts in s. 32 are key provisions for the protection of pension entitlements under the NL *PBA*, which is a fundamental purpose of that Act. Given their importance, it is possible that other persons or parties in Newfoundland and Labrador will wish to intervene on the issue of the scope of the s. 32 deemed trusts, which would be more practical in the NL Court.
13. In all of these circumstances, the Replacement Pension Plan Administrator submits that it is appropriate for this Court to refer the issues concerning the interpretation, scope, and application of s. 32 of the NL *PBA* to the NL Court for determination.
14. This is not a matter of jurisdiction as between the two Courts. It is a matter of this Court exercising its discretion to defer on these issues and refer them to the NL Court.

#### **PART IV: RELIEF REQUESTED**

15. The Replacement Pension Plan Administrator asks that this Court order that issues concerning the interpretation, scope, and application of s. 32 of the NL *PBA* be referred to the NL Court for determination.

Halifax, Nova Scotia, December 15, 2016.



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**PINK LARKIN**

**Ronald A. Pink, Q.C. and Bettina Quistgaard**

*Attorneys for the Petitioners-Mises-en-cause Morneau  
Shepell in its capacity as the Replacement Pension Plan  
Administrator*

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IN THE MATTER OF THE PLAN OF COMPROMISE  
OR ARRANGEMENT OF:  
THE BLOOM LAKE IRON ORE MINE LIMITED  
PARTNERSHIP

AND

WABUSH RESOURCES INC.

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PETITIONERS

AND

FTI CONSULTING CANADA INC.

MONITOR

AND

MORNEAU SHEPELL, In Its capacity as Replacement  
Pension Plan Administrator

MISES-EN-CAUSE

SUBMISSIONS OF MORNEAU SHEPELL ON PENSION  
ISSUES FOR REFERRAL TO NEWFOUNDLAND AND LABRADOR

**ORIGINAL**

Mr. Ronald A. Pink, Q.C. and Bettina Quistgaard

PINK LARKIN

Lawyers/Advocats

201 - 1463 South Park Street

Halifax, NS B3J 2L1

T. 902.423.7777

F. 902.423.9588

[rpink@pinklarkin.com](mailto:rpink@pinklarkin.com)

[bquistgaard@pinklarkin.com](mailto:bquistgaard@pinklarkin.com)

Counsel for Morneau Shepell