

**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*

**NOTICE OF INTERVENTION**

**TAKE NOTICE THAT** the Intervenor, FTI Consulting Canada Inc., in its capacity as court-appointed monitor of the Wabush CCAA Parties (as defined below), intends to intervene and wishes to be heard both orally and in writing with respect to the within Reference proceeding (the “**Reference**”) pursuant to the Order of Green CJNL, which order was granted on an *ex parte* basis on the 5<sup>th</sup> day of May 2017.

**AND THAT** the grounds of the proposed Intervention are:

1. THAT the Intervenor acts as court-appointed 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**”) in the context of 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**”).

2. THAT the Reference is not limited exclusively to matters of statutory interpretation of Section 32 of the *Pension Benefits Act*, but is rather inextricably related to the business and property of the Wabush CCAA Parties and to the matters currently pending before the CCAA Court in the CCAA Proceedings.
3. THAT insofar as the Reference purports to deal with concrete issues in connection with the Wabush CCAA Parties and the Wabush CCAA Proceedings, this Court should as a matter of comity and courtesy suspend the Reference as the CCAA Court has already specifically declined to have those same questions transferred for adjudication in this Province in a decision rendered on January 30, 2017. While the CCAA Court did acknowledge the possibility of a Reference being undertaken, at paragraph 52 of its decision, it was noted that the Court spoke only of the interpretation of the *Pension Benefits Act, simpliciter*, being addressed, not the fact-specific questions being posed by the Reference as they relate to Wabush CCAA Parties or to the Wabush CCAA Proceedings.
4. THAT the Reference as it currently exists constitutes an improper collateral attack on the order of January 30, 2017 rendered by the CCAA Court.
5. THAT the Reference is overly broad in scope because it ought to be limited to seeking an advisory opinion on the interpretation of the *Pension Benefits Act* and it ought not extend to a determination of rights of parties before the CCAA Court in relation to the Wabush CCAA Parties.
6. Furthermore, as currently drafted, the Reference directly impinges on a stay order granted by the CCAA Court in relation to the Wabush CCAA Parties.

**AND THAT** the Intervenor intends to apply for relief in respect of the foregoing issues in advance of the status hearing on June 9, 2017 on the following grounds:

1. Time is of the essence in clarifying the timing and the content of the Reference, as the May 5<sup>th</sup> Order requires Notices to be published twice in newspapers prior to May 26.
2. If the arguments of the Intervenor prevail, the Notices will be rendered moot and new Notices will be required.
3. In their current form, the Notices may cause confusion or mislead certain parties and stakeholders to believe that certain issues in relation to the Wabush CCAA Parties and the Wabush CCAA Proceedings will be subject to adjudication both before the CCAA Court and this Court, raising the possibility of conflicting rulings even though only the ruling of the CCAA Court would be binding upon the Wabush CCAA Parties and their creditors.

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

**Martin Whalen Hennebury Stamp**  
Solicitors for the Intervenor



**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

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**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.**