# SUPERIOR COURT

(Commercial Division)



CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-048114-157

DATE: August 12, 2021

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**BY THE HONOURABLE MICHEL A. PINSONNAULT, J.S.C.**

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

**BLOOM LAKE GENERAL PARTNER LIMITED**
**QUINTO MINING CORPORATION**
**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

**TWIN FALLS POWER CORPORATION**
**CHURCHILL FALLS (LABRADOR) CORPORATION LIMITED**
Twinco Mises-en-cause

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**JUDGMENT ON MOTION BY TWIN FALLS POWER CORPORATION TO DISMISS**

**FOR LACK OF JURISDICTION AND FOR *FORUM NON-CONVENIENS* AND ON CHURCHILL FALLS (LABRADOR) CORPORATION LIMITED'S CONTESTATION**

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## OVERVIEW

[1] Twin Falls Power Corporation ("**Twinco**") with the support of Churchill Falls (Labrador) Corporation Limited ("**CFLCo**"), is seeking the dismissal of the Petitioners' and of the Mises-en-cause's *Motion for the Winding Up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief*, pursuant to section 11 of the *Companies' Creditors Arrangement Act* (the "**CCAA**") and sections 214 and 241 of the *Canada Business Corporations Act* (the "**CBCA**") (the "**CBCA Motion**").

[2] The dismissal of the CBCA Motion is sought by Twinco[1] on the basis that this Court lacks jurisdiction to entertain and rule on the same as, *inter alia*, the Twinco Mises-en-cause are both residing in Newfoundland with no place of business or any assets in the Province of Québec (the "**Twinco Motion to dismiss**").

[3] Should the Court nevertheless find that it has jurisdiction herein, Twinco offers a subsidiary argument based on the doctrine of *forum non conveniens* as article 3135[2] of the *Civil Code of Québec* ("**CCQ**") stipulates that even if a Québec Court determines it has jurisdiction, it may decline jurisdiction where it considers the courts of another jurisdiction "*are in a better position to decide the dispute*".

[4] In other words, Twinco and CFLCo would have the matter and issues raised in the CBCA Motion be adjudicated before the courts of Newfoundland and Labrador (collectively "**Newfoundland**").

[5] The CCAA Parties[3] take the position that it is a matter for the Commercial Division of the Superior Court of Québec (the "**CCAA Court**"), where the coordinated sale of the CCAA Parties' assets and wind-down of their operations has been overseen for over half a decade, and where the CCAA Court has already asserted its jurisdiction over that of Newfoundland in the present CCAA Proceedings[4] since their commencement five years ago in 2015.

[6] At this juncture, the CCAA Court is not called upon to rule on the merits of the CBCA Motion, but solely on the Twinco Motion to dismiss based on a declinatory exception.

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[1] With the support of its shareholder CFLCo.

[2] **3135.** Even though a Québec authority has jurisdiction to hear a dispute, it may, exceptionally and on an application by a party, decline jurisdiction if it considers that the authorities of another State are in a better position to decide the dispute.

[3] As defined hereafter in paragraph 8.

[4] *Ibid*.

## 1. THE PROCEDURAL BACKGROUND

[7] On January 27, 2015, the CCAA Court issued an Initial Order (the "**Bloom Lake Initial Order**") commencing these proceedings (the "**CCAA Proceedings**") pursuant to the CCAA in respect of the Petitioners Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited and Cliffs Québec Iron Mining ULC and the Mises-en-cause The Bloom Lake Iron Ore Mine Limited Partnership and Bloom Lake Railway Company Limited (collectively, the "**Bloom Lake CCAA Parties**").

[8] On May 20, 2015, the CCAA Court issued an Initial Order (the "**Wabush Initial Order**") extending the scope of the CCAA Proceedings to the Petitioners Wabush Iron Co. Limited ("**Wabush Iron**") and Wabush Resources Inc. ("**Wabush Resources**") (Wabush Resources and Wabush Iron are collectively referred to hereafter as "**Wabush**") and the Mises-en-cause Wabush Mines, Wabush Lake Railway Company Limited, and Arnaud Railway Company (collectively, the "**Wabush CCAA Parties**") (the Wabush CCAA Parties and the Bloom Lake CCAA Parties are collectively referred to hereafter as the "**CCAA Parties**").

[9] FTI Consulting Canada Inc. was appointed as monitor in respect of the CCAA Parties (the "**Monitor**").

[10] On November 5, 2015, the CCAA Court issued an Order (the "**Amended Claims Procedure Order**") approving, *inter alia*, a procedure for the submission, evaluation and adjudication of claims against the CCAA Parties and their current and former directors and officers (the "**Claims Process**").

[11] Incidentally, Twinco filed a proof of claim pursuant to the Claims Process against Wabush for approximately $780,000[5]. The claim was allowed by the Monitor in 2016.

[12] On June 29, 2018, Mr. Justice Stephen W. Hamilton ("**Hamilton J.**") issued an Order sanctioning the Joint Plan of Compromise and Arrangement dated as of May 16, 2018, that was submitted by the CCAA Parties (the "**Plan**").

[13] On July 30, 2018, Hamilton J. issued the Plan Modification Order, pursuant to which minor modifications were made to the Plan to avoid unanticipated tax consequences.

[14] In furtherance of the Plan, the CCAA Parties, with the assistance of the Monitor, have been working to wind down the estates of the CCAA Parties so that the net proceeds from such recoveries and realizations can finally be distributed to the creditors of the Participating CCAA Parties[6] in accordance with the terms and conditions of the Plan as soon as possible.

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[5] **R-14** of the Motion to expand the powers of the Monitor.
[6] As defined in the Plan.

[15] So far, subject to the resolution and collection of certain outstanding tax refunds, the CCAA Parties have sold or realized on all their assets other than the combined 17.062% equity interest held in Twinco by Wabush (the "**Twinco Interest**").

[16] The initial interim distributions to the creditors with proven claims under the Plan took place in August and September 2018.

[17] A second interim distribution to such creditors with proven claims took place in mid-of May 2021.

[18] A final distribution will not occur until the realization or collection of all material assets of the CCAA Parties including the Twinco Interest.

[19] With respect to the aforesaid distributions, the CCAA Parties were informed by the Monitor that a significant majority of the Wabush creditors are former employees of Wabush Mines, many of whom are elderly, and who are reasonably assumed to be anxious to receive their final distributions as soon as possible.

[20] The monetization and realization of the remaining asset (the Twinco Interest), and the resolution of certain disputes surrounding tax issues, are one of the last material steps to be taken before the CCAA Parties can finally wind down the CCAA Proceedings.

## 2. THE CBCA MOTION

[21] Based on the CBCA Motion, the Court retained the following relevant facts for the purposes hereof:

- Twinco is an incorporated joint venture formed under the CBCA on February 18, 1960, among CFLCo, Wabush Iron, Wabush Resources and Iron Ore Company of Canada ("**IOC**"), among others;

- As at December 31, 2019, Twinco was owned 33.3% by CFLCo, 49.6% by IOC, and 17.062% interest held jointly by Wabush[7];

- Pursuant to Twinco's fiscal year 2019 Audited Financial Statements, Twinco has approximately $6.1M in cash and cash equivalent assets (the "**Twinco Cash**") and approximately $46,000 of liabilities[8];

- The history of the Twinco Plant[9] is long and complicated and is set out in significant detail in the CBCA Motion. However, the highlights are set out hereafter;

[7] 4.6% held by Wabush Iron Co. Limited and 12.5% by Wabush Resources Inc.
[8] **R-2** of the CBCA Motion.
[9] As defined below.

- In 1961, CFLCo licensed to Twinco the rights to develop a 225-megawatt hydroelectric generating plant on the Unknown River in Labrador (the "**Twinco Plant**");

- In addition to the Twinco Plant, Twinco owned a number of other assets including (i) the physical building which houses the Twinco Plant (the "**Twinco Building**"); (ii) the transmission lines from the Twinco Plant to its consumers (the "**Twinco Transmission Lines**"); and (iii) the equipment which comprises the Twinco Plant and which was used in the production of hydroelectric power (the "**Twinco Machinery**") (collectively, with the Twinco Building and Twinco Transmission Lines, and such other assets of Twinco the "**Twinco Assets**");

- In 1974, CFLCo took over the Twinco Plant and the Twinco Assets and undertook comprehensive maintenance obligations in respect of the Twinco Plant (the "**CFLCo Maintenance Obligations**"), and indemnified Twinco in respect of those obligations and environmental liabilities in connection with the Twinco Plant and Twinco Assets (the "**CFLCo Indemnity**")[10];

- The Twinco Plant was placed into an extended shutdown in 1974. Since that time until today, based on various environmental assessments commissioned by Twinco over the years as summarized in various Audited Financial Statements of Twinco, the CCAA Parties understand that potential environmental liabilities may have occurred in respect of the Twinco Plant and Twinco Assets (the "**Potential Environmental Liabilities**");

- The CCAA Parties are of the view that the responsibility for any environmental liability lies with CFLCo and not Twinco, pursuant to CFLCo's Maintenance Obligations and CFLCo Indemnity[11];

- It is not clear to the CCAA Parties and the Monitor whether, and to what extent, Twinco may have funded maintenance or environmental remediation that was CFLCo's responsibility, and for which Twinco may have a claim against CFLCo for reimbursement;

- As stated in the CBCA Motion, for years, both prior to and after the commencement of the present CCAA Proceedings, the CCAA Parties, with the support of IOC who is not contesting the CBCA Motion, have sought to obtain a distribution of the Twinco Cash to Twinco's shareholders, but such distribution has been continuously resisted by Twinco and by CFLCo;

- The CCAA Parties have reasons to believe that CFLCo did not support further distributions to the Twinco shareholders because it wants to ensure a cash pool

[10] As more fully detailed in the CBCA Motion.
[11] **R-6** of the CBCA Motion.

from Twinco to pay for the Potential Environmental Liabilities notwithstanding the CFLCo Indemnity and CFLCo Maintenance Obligations;

- Pursuant to Twinco's Articles of Continuance dated August 1, 1980[12], the shareholders are entitled to share rateably in the remaining property of Twinco upon dissolution;

- Wabush's share of the Remaining Twinco Cash[13] is approximately $1,040,000, a material amount, together with their *pro rata* share of what other money may be subject to reimbursement claims against CFLCo;

- As the information to determine the amount of maintenance and other indemnifiable expenses that may be subject to reimbursement by CFLCo is within the knowledge of Twinco, an accounting is requested in the CBCA Motion;

- Without this information, it is impossible for the CCAA Parties or the Monitor to calculate what the approximate true value of the Twinco Interest may be to ensure that the CCAA Parties' creditors receive appropriate recovery from the Twinco Interest.

### 2.1 **The CBCA Motion and the relief sought**

[22] The history of the CCAA Parties' repeated attempts to engage in a constructive dialogue with Twinco and its majority shareholder CFLCo, is more fully set out in detail in the CBCA Motion, which has been continued *sine die* until now pending the outcome of Twinco's Motion to dismiss.

[23] While the CCAA Parties were hopeful that a consensual resolution could be achieved, they concluded that based on the lack of desire of Twinco and CFLCo to engage in a constructive manner, a consensual resolution was not possible.

[24] Accordingly, on November 16, 2020, the CCAA Parties filed the CBCA Motion before the CCAA Court, seeking the issuance of the following orders against Twinco and CFLCo:

> a) confirming CFLCo's liability for Twinco's maintenance obligations and environmental liabilities related to the Twinco Plant from and after July 1, 1974;
>
> b) compelling an accounting from Twinco of all monies expended by Twinco in respect of maintenance and environmental costs that have not been reimbursed by CFLCo pursuant to the CFLCo Indemnity and CFLCo

[12] **R-4**.
[13] As defined below.

> Maintenance Obligations (collectively, the "**Reimbursable Environmental/Maintenance Costs**");
>
> c) directing CFLCo to reimburse all Reimbursable Environmental/Maintenance Costs (such amount to be reimbursed by CFLCo, being the "**CFLCo Reimbursement**") to Twinco for distribution to the shareholders as part of the winding up and dissolution of Twinco pursuant to the relief requested in paragraph (d) below;
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> d) directing the winding up and dissolution of Twinco pursuant to section 214 and/or section 241 (3)(l) of the CBCA and a distribution of: (i) the Twinco Cash net of all reasonable fees and expenses incurred by Twinco to implement and complete the wind-up and dissolution being sought in this Motion (the "**Remaining Twinco Cash**"), and (ii) the CFLCo Reimbursement to Twinco's shareholders, including Wabush, on a *pro rata* basis; and
>
> e) in the alternative to (d), directing Twinco and/or CFLCo to purchase the shares of Twinco held by Wabush pursuant to section 214 (2) and/or section 241 (3)(f) of the CBCA for a purchase price equal to the amount of Wabush's *pro rata* share of: (i) the Twinco Cash, and (ii) the CFLCo Reimbursement.
>
> [the "**Requested Relief**"]

[25] Some 61 days later, on January 15, 2021, concurrently with its Contestation of the CBCA Motion, CFLCo filed before the Supreme Court of Newfoundland and Labrador (the "**NL Court**"), an Originating Application for the Issuance of a Court-supervised Liquidation and Dissolution Order regarding Twinco (the "**Twinco Liquidation Application**") pursuant to sections 214 (1)(b)(ii), 215, and 217 of the CBCA, seeking, *inter alia*, the court-supervised liquidation of Twinco[14].

[26] Both this CCAA Court and the NL Court adjourned *sine die* the CBCA Motion and the Twinco Liquidation Application[15], in order to allow the parties an opportunity to explore the possibility of a consensual resolution of the matters raised in those proceedings which essentially boils down to disposing of the Twinco Interest.

[27] As those negotiations did not proceed in any meaningful way, the CCAA Parties sought to obtain the information necessary to determine with greater certainty the Twinco Interest by presenting their *Motion for the Expansion of the Monitor's Powers* ("**Expanded Monitor Powers Motion**") to facilitate the recovery of assets for the benefit of the CCAA Parties' creditors and the winding up of the CCAA Parties' estate and the termination of the CCAA Proceedings.

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[14] **C-1** (Court File No. 2021 01G 0432).
[15] As defined below.

[28] The Expanded Monitor Powers Motion related essentially to the Twinco Interest which is, to all intents and purposes, the last asset to monetize and realize in the context of the CCAA proceedings.

[29] Until the presentation of the Expanded Monitor Powers Motion on June 3, 2021, Twinco and its shareholder CFLCo had been steadfastly blocking all attempts of the CCAA Parties and the Monitor to monetize the Twinco Interest in the furtherance of the Plan, which involved obtaining the relevant and necessary documentation required to determine with reasonable certainty the value of the Twinco Interest in the context of the present CCAA Proceedings.

[30] Twinco's and CFLCo's refusal to deal with the Twinco Interest has left little alternative but to seek the wind down and the dissolution of Twinco in the context of the present CCAA Proceedings to finally permit the CCAA Parties, with the assistance of the Monitor, to realize this asset of Wabush, complete the final distribution to the Plan creditors and terminate at last the CCAA Proceedings that have been ongoing since 2015.

[31] By judgment rendered on July 14, 2021[16] (the "**Expanded Monitor Powers Judgment**"), this CCAA Court granted the relief sought in the Expanded Monitor Powers Motion, thus granting additional powers to the Monitor to seek from Twinco and CFLCo the necessary documentation and information that would enable the Monitor to once and for all determine the approximate true value of the Twinco Interest, bearing in mind that should the proper information be communicated to the Monitor, it may lead to the conclusion that it is not financially reasonable for the CCAA Parties to pursue the avenue sought with the CBCA Motion, should the Twinco Interest be mainly limited to the Wabush's share of the Twinco Cash.

[32] The Court was informed by the counsel for Twinco that despite CFLCo's present attempt to seek leave to appeal the same[17], the latter's Québec counsel had started communicating some document and information to the Monitor but nevertheless insisted on proceeding with the Twinco Motion to dismiss regardless of the outcome on the information communication process presently engaged and the Application for leave to appeal of CFLCo.

## 3. THE QUESTIONS AT ISSUE

[33] The Twinco Motion to dismiss and CFLCo's Contestation of the CBCA Motion raise essentially the lack of jurisdiction of this CCAA Court to hear and rule on the

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[16] 2021 QCCS 2946 (Application for leave to appeal this judgment by CFLCo only is presently pending).

[17] Twinco's counsel also informed the Court that unlike CFLCo, its client was not seeking leave to appeal the judgment of July 14, 2021, and was in agreement to proceed to its dissolution and liquidation, which is now requested by the CCAA Parties in the CBCÙ Motion filed in Québec and by CFLCo with the Twinco Liquidation Application filed subsequently in Newfoundland.

CBCA Motion and consequently, this CCAA Court should yield to the NL Court to hear and dispose of the Twinco Liquidation Application and the CBCA Motion.

[34] Should this CCAA Court find that it has nevertheless jurisdiction to hear the CBCA Motion, it should apply article 3135 CCQ stipulating that even if a Québec Court determines it has jurisdiction, it may decline jurisdiction where it considers the courts of another jurisdiction "*are in a better position to decide the dispute*".

[35] To sum it all up, this CCAA Court has to determine the following questions at issue:

- Does this CCAA Court lack the jurisdiction to hear and dispose of the CBCA Motion?

- In the affirmative, this CCAA Court should dismiss the CBCA Motion;

- In the negative and on a subsidiary basis, should this CCAA Court nevertheless decline jurisdiction in favour of the NL Court with respect to the matters and issues raised and the Requested Relief sought in the CBCA Motion based on the provisions of article 3135 CCQ and in application of the doctrine of *forum non convenience*?

## 4. **ANALYSIS**

[36] With all due respect and upon due consideration of the evidence and arguments put forward by counsel for Twinco and CFLCo, this CCAA Court finds that as a "*national court*", it has jurisdiction to hear and dispose of the CBCA Motion.

[37] This CCAA Court also finds that it would not be appropriate to apply the doctrine of *forum non conveniens* in this matter and nevertheless decline jurisdiction in favour of the NL Court with respect to the matters and issues raised and the Requested Relief sought in the CBCA Motion.

[38] Here is why.

### 4.1 **This CCAA Court has jurisdiction to decide the CBCA Motion**

[39] It is important to bear in mind that for lack of any success in their previous attempts to resolve their issues with Twinco and CFLCo on an amicable and consensual basis, the CBCA Motion is essentially a mean and an attempt by the Wabush shareholders of Twinco (with the assistance of the Monitor) to finally monetize and realize their shares in said corporation that has been essentially inactive since 1974, the whole for the purpose of distributing the realized proceeds of their shares to their creditors under the Plan approved by this CCAA Court in Québec.

[40] CFLCo is clearly amenable to this solution having filed its own Application seeking the dissolution and liquidation of Twinco some two months after the CBCA Motion.

[41] Moreover, at the hearing, counsel for Twinco confirmed that its client was now also in agreement to proceed with its dissolution and liquidation.



### 4.1.1 The CCAA and sections 214 and 241 CBCA

[42] The Requested Relief sought pursuant to the CBCA Motion are based on sections 214[18] and 241 CBCA, the latter dealing with oppression remedies.

[43] Upon the application of a shareholder, section 214 CBCA permits the Court[19] to order the liquidation and dissolution of a corporation and such other order under 214 or 241 as "*it thinks fit*" where the Court is satisfied that, among other things:

> a) in respect of the corporation or any of its affiliates, there is:
>
> (i) any act or omission of the corporation or any of its affiliates that effects a result,
>
> (ii) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or
>
> (iii) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer ("**Oppressive Conduct**"); or
>
> b) it is just and equitable to do so.

[44] Therefore, in addition to the relief offered by sections 214 and 241 CBCA also permits the CCAA Court to make an order for the liquidation and dissolution of a corporation and even an order directing a corporation or any other person to purchase

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[18] 214 (1) A court may order the liquidation and dissolution of a corporation or any of its affiliated corporations on the application of a shareholder,

> (a) if the court is satisfied that in respect of a corporation or any of its affiliates
>
> (i) any act or omission of the corporation or any of its affiliates effects a result,
>
> (ii) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or (iii) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer; or
>
> (b) if the court is satisfied that
>
> (i) a unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred, or
>
> (ii) it is just and equitable that the corporation should be liquidated and dissolved.
>
> (2) On an application under this section, a court may make such order under this section or section 241 as it thinks fit.
>
> (3) Section 242 applies to an application under this section.

[19] In Québec, this jurisdiction is exercised by the Commercial Division of the Superior Court, being the CCAA Court as well.

securities of a security holder, where the Court is satisfied that there is Oppressive Conduct.

[45] This CCAA Court agrees with counsel for the CCAA Parties that in the present instance, the provisions of the CCAA grant the Québec Superior Court (Commercial Division) jurisdiction to hear the CBCA Motion and grant the Requested Relief.

[46] Indeed, across Canada, CCAA courts have relied on section 11[20] CCAA to "*make any order that* [they consider] *appropriate in the circumstances*" and section 42[21] CCAA to "*import remedies from other statutory schemes*" to make orders comparable to the Requested Relief.

[47] More precisely, CCAA courts have found that they had jurisdiction to grant oppression remedies even when the oppression remedies were sought under a provincial business corporation act or statute.[22]

[48] The Court also shares the view of the counsel for the CCAA Parties that in alleging that the NL Court should have exclusive jurisdiction to hear any motion relating to the dissolution or the liquidation of Twinco pursuant to sections 207 and 214 CBCA merely because Twinco's registered office is in Newfoundland, CFLCo's Contestation fails to appreciate that section 42 CCAA is focused on the remedies that can be imported from other statutes, not the court or the jurisdictional requirements associated with them.

[49] Indeed, finding otherwise would be tantamount to asserting that certain requirements under provincial and federal statutes can prevent this CCAA Court from applying the provisions thereunder, on the grounds that it lacks jurisdiction to do so.

[50] With all due respect, this line of reasoning defies the purpose sought by the federal legislator by enacting section 42[23] CCAA and more importantly, it would reduce greatly the utility of section 42 CCAA if not eliminating it altogether. This would arrest this CCAA Court from utilizing any statute that is linked to a court outside of Québec.

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[20] 11. Despite anything in the *Bankruptcy and Insolvency Ac*t or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.
[Emphasis added]

[21] 42. The provisions of this Act may be applied together with the provisions of any Act of Parliament, or of the legislature of any province, that authorizes or makes provision for the sanction of compromises or arrangements between a company and its shareholders or any class of them. [Emphasis added]

[22] *Lightstream Resources Ltd (Re)*, 2016 ABQB 665, at paragraph 52; *Stelco Inc., Re,* [2005] O.J. No. 1171, at paragraphs 52–54.

[23] Previously, section 20 CCAA.

[51] Moreover, the approach advocated by Twinco and CFLCo undermines the very nature of a Canada's insolvency regime by failing to take into consideration the Supreme Court's reasoning in laying out the "single-control" model.

### 4.1.2 The "Single Control" Model

[52] In the case of *Sam Lévy & Associés v. Azco Mining Inc.*[24] ("***Sam Lévy***"), the Supreme Court of Canada stated that the "single-control" model applied to insolvency proceedings, a model which favours litigation involving an insolvent company to be dealt within a single jurisdiction:

> [27] Stewart was, as stated, a winding-up case, but the legislative policy in favour of "single control" applies as well to bankruptcy. There is the same public interest in the expeditious, efficient and economical clean-up of the aftermath of a financial collapse. Section 188 (1) [BIA] ensures that orders made by a bankruptcy court sitting in one province can and will be enforced across the country.
>
> [Emphasis added]

[53] While the *Sam Lévy* case involved proceedings under the *Bankruptcy and Insolvency Act* ("**BIA**"), courts have adopted the position that the "single control" model now also applies to CCAA proceedings.[25]

[54] This CCAA Court must not ignore the fact that in the present instance, in 2017, Hamilton J., then acting as case managing judge in these very CCAA Proceedings since 2015, ruled as follows on the "single control" model:

> **1- The jurisdiction of the CCAA Court**
>
> [29] In principle, all issues relating to a debtor's insolvency are decided before a single court.[26] This rule is based on the "public interest in the expeditious, efficient and economical clean-up of the aftermath of a financial collapse."[27] This public interest favours a "single control" of insolvency proceedings by one court as opposed to their fragmentation among several courts.[28]
>
> [30] The Supreme Court in *Sam Lévy* concluded as follows with respect to the relevant test:

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[24] *Sam Lévy & Associés v. Azco Mining Inc.*, 2001 SCC 92.

[25] *Essar Steel Algoma Inc., Re.*, 2016 ONSC 595, paragraphs 29–30; *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, paragraph 22.; *Newfoundland and Labrador v. AbitibiBowater Inc.*, 2012 SCC 67, paragraph 21.; *Montréal, Maine & Atlantic Canada Co., Re.,* 2013 QCCS 5194, at paragraphs 24–25.

[26] *Sam Lévy & Associés Inc.* v. *Azco Mining Inc.*, 2001 SCC 92, par. 25-28.

[27] *Ibid*, par. 27.

[28] *Ibid*, par. 64.

> 76 In the present case, we are confronted with a federal statute that *prima facie* establishes one command centre or "single control" (*Stewart*, *supra*, at p. 349) for all proceedings related to the bankruptcy (s. 183 [1]). Single control is not necessarily inconsistent with transferring particular disputes elsewhere, but a creditor (or debtor) who wishes to fragment the proceedings, and who cannot claim to be a "stranger to the bankruptcy", has the burden of demonstrating "sufficient cause" to send the trustee scurrying to multiple jurisdictions. Parliament was of the view that a substantial connection sufficient to ground bankruptcy proceedings in a particular district or division is provided by proof of facts within the statutory definition of "locality of a debtor" in s. 2(1). The trustee in that locality is mandated to "recuperate" the assets, and related proceedings are to be controlled by the bankruptcy court of that jurisdiction. The Act is concerned with the economy of winding up the bankrupt estate, even at the price of inflicting additional cost on its creditors and debtors.[29]
>
> (Emphasis added [by Hamilton J.])

[31] Although the *Sam Lévy* case was decided in the context of the *Bankruptcy and Insolvency Act* ("BIA"),[30] the same principles apply in the context of the other insolvency legislation, including the CCAA.[31] The CCAA court has jurisdiction to deal with all of the issues that arise in the context of the CCAA proceedings.[32] The stay of proceedings under the CCAA gives effect to this principle by preventing creditors from bringing proceedings outside the CCAA proceedings without the authorization of the CCAA court.

[32] There are clear efficiencies to having a single court deal with all of the issues in a single judgment.

[33] The general rule is therefore that the Court should rule on all issues that arise in the context of these insolvency proceedings.[33]

[Emphasis added]

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29 *Ibid*, par. 76.

30 R.S.C. 1985, c. B-3.

31 *Century Services Inc.* v. *Canada (Attorney General)*, 2010 SCC 60, par. 22; *Newfoundland and Labrador* v. *AbitibiBowater Inc.*, 2012 SCC 67, par. 21; *Montreal, Maine & Atlantic Canada Co./Montréal, Maine & Atlantique Canada Cie (Arrangement relatif à)*, 2013 QCCS 5194, par. 24-25; *Re Nortel Networks Corporation et al*, 2015 ONSC 1354, par. 24; *Re Essar Steel Algoma Inc.*, 2016 ONSC 595, par. 29–30, judgment of Court of Appeal ordering (i) Cliffs to seek leave to appeal the Order, (ii) the hearing of the leave to appeal motion be expedited, and (iii) the issuance of a stay pending the disposition of the leave to appeal motion, 2016 ONCA 138.

32 Section 16 CCAA provides that the orders of the CCAA court are enforced across Canada.

[16] *Every order made by the court in any province in the exercise of jurisdiction conferred by this Act in respect of any compromise or arrangement shall have full force and effect in all the other provinces and shall be enforced in the court of each of the other provinces in the same manner in all respects as if the order had been made by the court enforcing it*.

33 *Arrangement relatif à Bloom Lake*, 2017 QCCS 284 (January 30, 2017).

[55] At the time, Hamilton J. refused to refer issues relating to the interpretation of the Newfoundland and Labrador *Pension Benefits Act* to the Supreme Court of Newfoundland.



#### 4.1.3 The Superior Court of Québec (Commercial Division) sits as a national court

[56] In the *Sam Lévy* case, the Supreme Court of Canada stated that the court overseeing insolvency proceedings (unlike the court sitting in civil proceedings) is pursuing the objectives of a federal statute that establishes a centralized "*command centre*" for all proceedings related to a debtor:

> 73 In the first place, as stated, the *Amchem* approach has to be applied here with full regard to the context of Canadian bankruptcy legislation. This appeal involves the allocation of a particular bankruptcy matter within a single national bankruptcy scheme created by the Act. As shown in *Holt Cargo Systems, supra*, consideration of the allocation of a matter having different aspects (e.g. maritime law and bankruptcy law), as between Canadian courts and foreign courts operating under quite different legislative or other schemes, may raise different problems.
>
> 74 Secondly, *Amchem* and its progeny involved private litigation. Here, as explained in *Holt Cargo Systems, supra*, there is the important public interest aspect mentioned above. The Court looks not only at the *Amchem* factors but must strive to give effect to Parliament's intent to create an economical and efficient national system for the administration of bankrupt estates, as evidenced in the Act.
>
> […]
>
> 76 In the present case, we are confronted with a federal statute that *prima facie* establishes one command centre or "single control" (*Stewart, supra*, at p. 349) for all proceedings related to the bankruptcy (s. 183 (1)). Single control is not necessarily inconsistent with transferring particular disputes elsewhere, but a creditor (or debtor) who wishes to fragment the proceedings, and **who cannot claim to be a "stranger to the bankruptcy"**, has the burden of demonstrating "sufficient cause" to send the trustee scurrying to multiple jurisdictions. Parliament was of the view that a substantial connection sufficient to ground bankruptcy proceedings in a particular district or division is provided by proof of facts within the statutory definition of "locality of a debtor" in s. 2(1). The trustee in that locality is mandated to "recuperate" the assets, and related proceedings are to be controlled by the bankruptcy court of that jurisdiction. The Act is concerned with the economy of winding up the bankrupt estate, even at the price of inflicting additional cost on its creditors and debtors.
>
> 77 The "balancing test" advocated by the appellant based on the *Amchem* factors and general principles of private international law fails to take these

> important public policies into account. The Québec Superior Court sitting in Bankruptcy is, in a very real sense, sitting as a national court.
>
> [Emphasis added]

[57] As such, the Québec Superior Court (Commercial Division) sitting in the present CCAA Proceedings *is, in a very real sense, sitting as a national court*.



#### 4.1.4 Twinco and CFLCo are not "Strangers to the Bankruptcy"

[58] Bearing in mind that the teachings in the *Sam Lévy* case also apply to proceedings governed by the CCAA, the Supreme Court of Canada held that a creditor who cannot claim to be a "*stranger to the bankruptcy*" but wishes to *fragment the proceedings*, in spite of the single-control model, has the burden of demonstrating sufficient cause to send the "*trustee scurrying to multiple jurisdictions*."

[59] The Supreme Court of Canada indicated that such cause may be demonstrated where the dispute relates to a matter that is *outside even a generous interpretation of the administration of the bankruptcy*:

> 36 Despite the fact that England is a unitary state without the constitutional limitations imposed by our division of powers, the courts in Canada have generally hewn ever since 1874 to the basic dividing line between disputes related to the administration of the bankrupt estate and disputes with "strangers to the bankruptcy". The principle is that if the dispute relates to a matter that is outside even a generous interpretation of the administration of the bankruptcy, or if the remedy is not one contemplated by the Act, the trustee must seek relief in the ordinary civil courts. […]

[60] In other words, such cause may be demonstrated where the opposite party is a "*stranger to the bankruptcy*".

[61] This might explain why in the Twinco Motion to dismiss, Twinco alleged that it and its shareholder CFLCo were strangers to the present CCAA Proceedings:

> 10. Neither Twinco nor CFLCo is asking for their contractual rights to be determined by this Honourable Court. Further, neither Twinco nor CFLCo is a party to the CCAA Proceedings, nor is either corporation a party governed by the original or any subsequent order issued in the CCAA Proceedings. **Rather, both Twinco and CFLCo are strangers to the CCAA Proceedings in which the Wabush Motion has been brought**.
>
> [Emphasis added]

[62] This CCAA Court already broached this issue in the Expanded Monitor Powers Judgment and found that Twinco's assertion was inaccurate at best if not misleading:

> [48] In connection with the last argument[34] put forward by both Twinco and CFLCo that there is a limit to the statutory discretion under section 11 of the CCAA, they added that the present CCAA Proceedings which aim at restructuring corporations as opposed to their liquidation, are not the appropriate vehicle for investigation of third parties to the CCAA Proceedings.
>
> [49] In line with the forgoing, Twinco makes the astonishing if not misleading affirmation that it is a third party (a stranger) herein, with no link to the CCAA Proceedings:
>
> > 17. Further, neither Twinco nor CFLCo is a party to the CCAA Proceedings, nor is either corporation a party governed by the original or any subsequent order issued in the CCAA Proceedings.
> >
> > 18. Rather, both Twinco and CFLCo are strangers to the CCAA Proceedings in which the Wabush Motion has been brought.
> >
> > 117. Here, Twinco is a third party, with no link with the CCAA Proceedings. […] Twinco is neither the debtor, **nor a creditor**, an employee, a director, a shareholder, nor another party doing business with the insolvent company. It has no interest whatsoever in the recovery, and now, in the liquidation of the CCAA Parties.[35]
>
> [50] **Contrary to the foregoing assertions, Twinco is not a "stranger to the CCAA Proceedings**".
>
> [51] Pursuant to the Claims Process[36] authorized by the Court, Twinco filed a proof of claim against Wabush for approximately $780,000[37]. Twinco's claim was allowed by the Monitor in 2016[38].
>
> [52] The Court understands that Twinco even received a partial distribution in respect of its claim under the Plan and is likely to participate in the final distribution.
>
> [Emphasis added]

[63] The Expanded Monitor Powers Judgment essentially granted additional powers enabling the Monitor to obtain from Twinco and CFLCo the relevant information and documentation that would permit at last the determination of the true value of the

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[34] [47] […] The statutory discretion under section 11 of the CCAA does not extend to the Expanded Monitor Powers sought by the CCAA Parties in the Motion.

[35] Paragraphs 17, 18 and 117 of the Twinco's Argument Plan.

[36] On November 5, 2015, the CCAA Court issued an Order, *inter alia*, approving a procedure for the submission, evaluation and adjudication of claims against the CCAA Parties and their current and former directors and officers (the "**Claims Process**").

[37] **R-14**.

[38] *Ibid*.

Twinco Interest for realization purposes. Until that time, Twinco and CFLCo had steadfastly denied the requested information.

[64] This led the Court to make the following comments in the Expanded Monitor Powers Judgment:

> [61] The Court also understands that it is the steadfast and the somewhat inexplicable refusal of Twinco and of its shareholder CFLCo to provide any of the Twinco Requested Information[39] to the CCAA Parties and to the Monitor that prevents the latter from determining with a minimum of accuracy what is the estimated value of the Twinco Interest.
>
> [62] This determination expected to be performed by the Monitor relates directly to an asset of the CCAA Parties that is covered by the Plan sanctioned by this Court, and such a determination falls squarely on the tasks, duties and responsibilities of the Monitor within the present CCAA Proceedings regardless of the eventual dissolution or not of Twinco.
>
> [63] Moreover, of obvious significance in the eyes of the Court, Twinco filed a proof of claim for $780,000 that was accepted by the Monitor pursuant to the Claims Process approved by the Court.
>
> [64] It is somewhat incomprehensible that Twinco would nevertheless affirm that it is a third party, a "stranger" with no link with the CCAA Proceedings and that it is neither the debtor, nor a creditor, an employee, a director, a shareholder, nor another party doing business with the CCAA Parties that include two of its shareholders (Wabush).
>
> [65] How can Twinco seriously pretend that it has no interest whatsoever in the recovery, and presently, in the liquidation of the CCAA Parties when it filed a proof of claim for $780,000?
>
> [66] Twinco even stands to retrieve by way of the final distribution, a portion of the Twinco Interest once realized by the Monitor, as the case may be.
>
> [67] Moreover, didn't Twinco attorn to the jurisdiction of the Québec Superior Court (Commercial Division) by deciding to file a proof of claim against the Wabush shareholders in the present CCAA Proceedings?[40]
>
> [Emphasis added]

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[39] Purposely limiting the same to documents that the Wabush shareholders already have.

[40] *Bouygues Building Canada inc. v. Iannitello et Associés inc*, 2018 QCCA 504:
[23] By submitting a proof of claim to the Trustee and appealing the disallowance, the Joint Venture attorned to the jurisdiction of the Québec Superior Court sitting in bankruptcy matters. It could hardly blame the Trustee after the fact as it did for having decided on the validity of the claim as submitted, since the Trustee was obliged to do so. The Joint Venture did not seek permission to continue the Ontario proceedings with a view to qualifying its contingent claim prior to filing a proof of claim with the Trustee. [References omitted]

[65] The Court must answer to the latter question in the affirmative.

[66] As Courts have routinely found that the filing of a proof of claim in insolvency proceedings amounts to an attornment and consent by the filing party to the CCAA court[41], this CCAA Court also finds that by filing a proof of claim with the Monitor, Twinco has already attorned and consented to the jurisdiction of this CCAA Court.

[67] Be that as it may, it is highly relevant to point out that with the present CCAA Proceedings and more particularly, via the CBCA Motion, the CCAA Parties with the assistance of the Monitor are endeavoring to realize the Twinco Interest in order to distribute the proceeds to their creditors which includes Twinco.

[68] First and foremost, the CBCA Motion purports to monetize and revendicate the Twinco Interest which constitutes, in the eyes of the Court, a property that forms part of the CCAA Parties' patrimony and that is subject to the court-sanctioned Plan.

[69] The Court believes that the parties that are in possession of that property, namely the Twinco Interest, and who refuse to cooperate with the Monitor in the execution of its court-granted powers to implement the Plan, are no "*strangers*" to the present CCAA Proceedings especially if Twinco is a creditor of the Wabush who filed a $780,000 proof of claim that was accepted by the Monitor.

[70] Therefore, the Commercial Division of the Québec Superior Court clearly has jurisdiction herein.

[71] In other words, the Court finds that where the ultimate objective of the CBCA Motion is to recover assets belonging to the Wabush patrimony, this Court sitting as a CCAA Court who has been managing these CCAA Proceedings since 2015, has jurisdiction herein, especially since this approach facilitates the prompt resolution of insolvency cases.[42]

### 4.1.5 Conclusion on the jurisdiction of this CCAA Court

[72] In conclusion, this CCAA Court finds that it has jurisdiction to hear the CBCA Motion.

[73] To reach that conclusion, the Court shares the opinion of the counsel for the CCAA Parties that in the present matter, Twinco and CFLCo are no "*strangers to the bankruptcy*" (or the CCAA Proceedings) as the Monitor stands to recover assets which

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[41] *Van Breda v. Village Resorts Ltd*, 2012 SCC 17, at paragraph 79; *Microbiz Corp v. Classic Software Systems Inc*, [1996] OJ no 5094, at paragraph 1 (SCJ); *Joint Venture c. Iannitello et Associés inc*, footnote 39.

[42] *Cantore v. Nemaska Lithium Inc.*, 2020 QCCA 1333, at paragraphs 9–10; *Compagnie de pavage d'asphalte Beaver ltée v. Morency*, 1991 CanLII 3680 (QC CA), at paragraphs 7-9.

belong to the CCAA Parties' estate, being the Wabush portion of the Twinco Cash on hand and any other amount which may become payable to the latter.

[74] More precisely:

> a) the CBCA Motion relates to the administration of the CCAA Parties' estate, as it is in respect of an asset of the CCAA Parties, being the Twinco Interest;
>
> b) the Twinco Interest is a material asset of the CCAA Parties. If the Requested Relief is granted by this CCAA Court, it would have a material impact on the Plan creditors as it would increase the amounts available to them in any future distributions under the Plan;
>
> c) Twinco has filed a proof of claim in these CCAA Proceedings which has been accepted by the Monitor, making Twinco a creditor of the CCAA Parties in these CCAA Proceedings;
>
> d) by filing its proof of claim with the Monitor, Twinco has attorned and consented to the jurisdiction of this CCAA Court; and
>
> e) the CBCA Motion essentially seeks to revendicate the Wabush's property (the Twinco Interest) that remains in their possession.

### 4.2 Subsidiarily, this CCAA Court should not decline to exercise its jurisdiction based on the doctrine of *forum non conveniens*

[75] At the outset, it is relevant to bear in mind, with all due respect, that Twinco and CFLCo failed to meet the required burden for this CCAA Court to decline jurisdiction for the reasons more fully discussed above.

[76] Under such circumstances, Twinco offered a subsidiary argument based on article 3135 CCQ that gives rise to the doctrine of *forum non conveniens* by stipulating that even if a Québec Court determines it has jurisdiction, it may decline jurisdiction where it considers the courts of another jurisdiction "*are in a better position to decide the dispute*".

[77] The application of the doctrine of *forum non conveniens* is contextual and the factors that the court will consider vary in each case.

[78] The jurisprudence has identified the following non-exhaustive list of factors:

> (i) the location of the parties; (ii) the contractual provisions that specify applicable law or accord jurisdiction; (iii) the avoidance of a multiplicity of proceedings; (iv) the geographical factors suggesting the natural forum; (v) the jurisdiction in which the factual matters arose; (vi) the place of business of the parties; (vii) the

> location in which the majority of witnesses reside; (viii) the cost of transferring the case or declining the stay; (ix) the impact of a transfer on the conduct of the litigation or on related parallel proceedings; (x) the possibility of conflicting judgments; (xi) the location of evidence; (xii) the applicable law; and (xiii) the recognition and enforcement of a judgment.

[79] Relying on many of those factors, Twinco's counsel[43] argued that in light of the issues raised in the CBCA Motion leading to the Requested Relief (the "**Issues**"), the Superior Court of Québec is not an appropriate forum to hear and dispose of those Issues.

[80] In fact, the real and substantial connection between the said Issues and the forum of Newfoundland is evident for the following reasons:

- Twinco and CFLCo are not domiciled or resident in Québec; they are headquartered and chiefly operate in Newfoundland and Labrador;

- All material agreements referred to in the CBCA Motion are not governed by the laws of Québec; two of those agreements expressly provide that they are governed by the laws of Newfoundland (now Newfoundland and Labrador); the third one is silent on jurisdiction but is a subsidiary document of one of the other two agreements mentioned above;

- Any consideration of any potential environmental liabilities that Twinco might have would arise exclusively under the laws of Newfoundland and Labrador;

- Moreover, the jurisdiction of Newfoundland and Labrador is where witnesses and evidence required for the determination of the aforementioned Issues are located; and

- On January 15, 2021, CFLCo, in its capacity of shareholder of Twinco, filed the Twinco Liquidation Application before the NL Court seeking the issuance of a liquidation and dissolution order in respect of Twinco pursuant to the CBCA with Wabush Resources and Wabush Iron being parties to these proceedings.

[81] In light of the foregoing, the NL Court would be the court having a real and substantial connection to Twinco and CFLCo, the material agreements raised in the CBCA Motion and with the laws which govern them.

[82] According to Twinco and CFLCo, the NL Court is a clearly the more appropriate forum and, as such, it is, in the interest of justice, better suited to take jurisdiction of this matter.

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[43] With the support of the counsel for CFLCo.

[83] Twinco's counsel also argued that the only thing connecting Twinco to the CCAA Proceedings was that Wabush Resources and Wabush Iron collectively own a total of 17.062% of the shares of Twinco, the remainder being held by Iron Ore Company of Canada[44] (IOC) (49.6%) and CFLCo (33.3%), it does not constitute a "connecting factor" under article 3148 CCQ.

[84] However, setting aside the finding that Twinco attorned to the jurisdiction of this CCAA Court by filing a proof of claim, the undersigned did not come to the conclusion that this CCAA Court had jurisdiction herein based on article 3138 CCQ.

[85] Twinco also argued that the existence of proceedings pending between the parties in another jurisdiction (Newfoundland) militated in favour of the CBCA Motion being heard before the NL Court, as otherwise, there is a risk of contradictory judgments resulting from the multiplication of proceedings.

[86] With all due respect, the Court finds it difficult to entertain the idea of conflicting judgments with both proceedings actually being heard in Québec and in Newfoundland, given that they both seek the dissolution and liquidation of Twinco which also involves in all instances the determination and the realization of the Wabush Twinco Interest.

[87] Be that as it may, this CCAA Court understands that the discretion to decline to hear legal proceedings on the basis of the doctrine of *forum non conveniens* as it is conferred pursuant to article 3135 CCQ, must only be exercised by the judge in exceptional circumstances[45].

[88] More recently in 2012, in the case of *Van Breda,* the Supreme Court of Canada reiterated that principle and held that:

- the party raising the doctrine of *forum non conveniens* must show that the alternative forum is "*clearly*" more appropriate, and that it would be "*fairer and more efficient*" to transfer the proceedings to it; and

- the court "*should not exercise its discretion … solely because it finds, once all relevant concerns and factors are weighed, that comparable forums exist in other provinces*".[46]

[89] With all due respect, this CCAA Court agrees with the counsel for the CCAA Parties that in the present context, the combination of the relevant facts raised by Twinco and CFLCo do not lead to a finding that it is "*clearly*" more appropriate and warranted to decline jurisdiction and to transfer the CBCA Motion to the NL Court.

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[44] Incidentally, IOC with 49.6% of Twinco's shares, is one of the CCAA Parties and is not contesting the CBCA Motion.

[45] *Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, 2002 SCC 78, at paragraph 77.

[46] *Van Breda v. Village Resorts Ltd*, 2012 SCC 17, at paragraphs 105,108, 109 and 110.

[90] On the contrary, such an exercise of its judicial discretion would lead to unfair and inefficient results as:

- a) the parties would incur additional expenses in transferring the CBCA Motion to the NL Court;

- b) transferring the CBCA Motion would result in a multiplicity of proceedings;

- c) as this CCAA Court as case manager is seized of and is already familiar with the details of the CCAA Proceedings and the CCAA Parties, as opposed to the NL Court;

- d) the CBCA Motion is in respect of a material asset of the CCAA Parties and has an impact on and relates to the CCAA Proceedings, the administration of the CCAA Parties' estate and the implementation of the court-sanctioned Plan;

- e) except for the interpretation of certain contractual provisions where the laws of Newfoundland are elected as applicable law, none of the issues in the CBCA Motion are related to Newfoundland law as most of the Issues are in respect of federal corporate legislation, in which this CCAA Court is particularly familiar with;

- f) in a global pandemic context which unfortunately seems to continue for the time being, factors of geographical nature are not relevant since evidence can be adduced electronically and any hearing will most likely be conducted in a virtual manner;

- g) having already found that this CCAA Court has jurisdiction to hear the CBCA Motion, transferring the same would offend the "single-control" model previously discussed; and

- h) lastly, contrary to the allegations of Twinco and CFLCo, the Twinco Liquidation Application filed on January 15, 2021, in the NL Court cannot be considered as an existing proceeding in another jurisdiction as it was filed simultaneously with CFLCo's Contestation some 61 days after the CBCA Motion.

[91] The fact that this CCAA Court will be called upon to apply and interpret certain contractual provisions of agreements which provide that the laws of Newfoundland are applicable does not at all bar this CCAA Court from exercising its jurisdiction.

[92] In fact, in the present CCAA Proceedings, this CCAA Court has already exercised such jurisdiction over these matters when it was asked to interpret a series of contracts governed by the laws of Newfoundland to determine if Wabush Iron had the

obligation to pay mining royalties to Canadian Javelin Foundries & Machine Works Limited.[47]

[93] Moreover, this is not the first time where this CCAA Court is called upon to consider the application of the doctrine of *forum non conveniens* in these CCAA Proceedings which previously involved legislation from competing jurisdictions which happened to be in relation to, among other things, Newfoundland's *Pension Benefit Act*.

[94] Although everyone recognized the jurisdiction of this CCAA Court at the time, certain parties[48] requested that Hamilton J. should seek the aid of the NL Court to interpret and rule on contracts governed by the laws of Newfoundland.

[95] In the previously mentioned judgment rendered on January 30, 2017, Hamilton J. ruled that he would not refer the matter involving Newfoundland's *Pension Benefit Act* to the NL Court[49].

[96] Recalling the clear efficiency of the "single control" model[50], Hamilton J. made the following comments about the legal considerations that militated in favour of a referral to the NL Court and pointing, *inter alia*, on the fact that a dispute is governed by foreign law does not have much weight in a *forum non conveniens* analysis:

> [41] This is the key argument [the legal considerations] put forward by the parties suggesting that the NLPBA issues be referred to the NL Court: the issues relate to the NLPBA, and the NL Court is best qualified to interpret the NLPBA.
>
> [42] The Court accepts as a starting point that the NLPBA applies in the present matter: the pension plans are regulated by the NL Superintendent in accordance with the NLPBA (although OSFI also regulates the Union Plan in accordance with the PBSA) and the plans expressly provide that they are interpreted in accordance with the NLPBA.
>
> [43] The Court also accepts the obvious proposition that the NL Court is more qualified to deal with an issue of Newfoundland and Labrador law than the courts of Québec, particularly since Newfoundland and Labrador is a common law jurisdiction and Québec is a civil law jurisdiction.

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[47] *Bloom Lake General Partner Ltd., Re.*, 2018 QCCS 996, at paragraphs 36 and *ff*:
[37] Wabush Mines produced the report of Kevin F. Stamp, Q.C., who is licensed and qualified to practice law in the Province of Newfoundland and Labrador since 1978.[47] His report was not contested by MFC and he did not testify at the trial.

[48] With the objection of the Monitor, *inter alia*.

[49] *Bloom Lake General Partner Ltd., Re.*, *supra* note 33.

[50] *Ibid.*, paragraphs 32–33.

[44] However, that does not mean that the Court will automatically refer every issue governed by the law of another jurisdiction to the courts of that other jurisdiction.

[45] First, there are rules in the *Civil Code* with respect to how Québec courts deal with issues governed by foreign law. Articles 3083 to 3133 C.C.Q. set out the rules to determine which law is applicable to a dispute before the Québec courts, and Article 2809 C.C.Q. sets out how the foreign law is proven before the Québec courts.

[46] Further, pursuant to these rules, Québec courts regularly hear matters governed by foreign law. The Court of Appeal recently held that the fact that a dispute is governed by foreign law does not have much weight in a *forum non conveniens* analysis:

> [98] Si on revoie les considérations du Juge, portant sur dix points, pour conclure que le for géorgien est préférable, deux aspects principaux en ressortent, soit les coûts et la loi applicable.
>
> [99] Quant à cette dernière considération, elle n'est pas d'un grand poids, à mon avis. Parce que le débat porte sur les faits plutôt que sur le droit. Parce que la *common law* est tout de même familière aux tribunaux québécois. Parce que faire la preuve de la loi d'un État américain n'est pas un grand défi, c'est même chose courante.
>
> [100] Et surtout, parce que le critère de la loi applicable ne constitue pas en soi un facteur important. Dans tout litige international, les conflits de lois sont l'ordinaire et non l'exception.[51]

[47] In other words, the mere fact that a dispute is governed by foreign law is not a good reason to send the case to the foreign jurisdiction. This principle was applied in a CCAA context in the *MMA* case.[52]

[48] There are examples in the insolvency context of the court with jurisdiction over the insolvency declining to send an issue governed by foreign law to the foreign court. In *Sam Lévy*, the Supreme Court declined to send an insolvency matter to British Columbia simply because there was a choice of B.C. law, stating, "The Québec courts are perfectly able to apply the law of British Columbia."[53]

[…]

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51 *Stormbreaker Marketing and Productions Inc.* c. *Weinstock*, 2013 QCCA 269, par. 98–100.

52 *Montreal, Maine & Atlantic Canada Co./Montréal, Maine & Atlantique Canada Cie (Arrangement relatif à)*, 2013 QCCS 5194, paragraph 20.

53 *Sam Lévy*, *supra* note 23, par. 61.

> [50] The Monitor submitted cases in which Québec courts have interpreted different provisions of the pension laws of other provinces.[54] The Court also notes that it dealt to a more limited extent with the deemed trust under the NLPBA in its decision dated June 26, 2015[55].
>
> […]
>
> [70] The Court will not refer issues of Québec law or federal law to the NL Court, and if those issues are too closely interrelated to the NLPBA issues, or if in the interests of simplicity and expediency they should all be decided by the same court, then the solution is not to refer any issues to the NL Court.

[97] With all due respect, based on the facts of the case at bar, this CCAA Court does not find any compelling reasons justifying declining jurisdiction in favour of the NL Court with respect to the CBCA Motion as requested by Twinco and CFLCo.

[98] In conclusion, this CCAA Court having jurisdiction with respect to the matter and the Issues raised in the CBCA Motion, shall dismiss the Twinco Motion to dismiss and CFLCo's Contestation.

**FOR THOSE REASONS, THE COURT:**

[99] **DECLARES** that the Superior Court of Québec (Commercial Division) standing as a CCAA Court, has jurisdiction to hear and dispose of the matter and the issues raised by the Petitioners and the Mises-en-cause in the *Motion for the Winding Up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* dated November 16, 2020 [the "**Application**"];

[100] **DISMISSES** the *Modified Motion by Twin Falls Power Corporation to dismiss the Application for lack of jurisdiction and for forum non-conveniens* dated May 17, 2021, and *Churchill Falls (Labrador) Corporation Limited's Amended Contestation of the Petitioners' Motion for the winding up and dissolution, distribution of assets, reimbursement of monies and additional relief* dated May 19, 2021;

[101] **THE WHOLE** with judicial costs payable by Twin Falls Power Corporation and Churchill Falls (Labrador) Corporation Limited.

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54 *Emerson Électrique du Canada ltée* c. *Chatigny*, 2013 QCCA 163; *Bourdon* c. *Stelco inc.*, 2004 CanLII 13895 (QC CA).

55 2015 QCCS 3064.

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**MICHEL A PINSONNAULT, J.S.C.**



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Hearing date: August 6, 2021