



O'FLAHERTY WELLS LAW\*

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May 19, 2016

Muskrat Falls Corporation  
Hydro Place  
500 Columbus Drive  
St. John's, NL  
A1E 0A1

Dear Sir/Madam,

**Re: 2016 01G 3118****Plaintiff: Andritz Hydro Canada Inc.****Defendant: Muskrat Falls Corporation**

We act as agents for the Plaintiff Andritz Hydro Canada Inc. in respect of the above referenced matter.

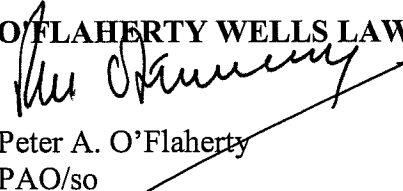
Enclosed for service please find the following:

1. Statement of Claim issued May 18<sup>th</sup>, 2016;
2. Interlocutory Application (Inter Partes) of the Plaintiff for an interim Interlocutory injunction issued May 19<sup>th</sup>, 2016; and,
3. Affidavit of Daniel Carrier.

Please note that the Application has been issued for a return date of June 7<sup>th</sup>, 2016 at 10:00 am, for a return date only. Counsel for the Plaintiff, Martin Scisizzi of Borden Ladner Gervais, may be reached at the address for service and contact information identified in the Statement of Claim.

We trust this is satisfactory.

Yours very truly,

**O'FLAHERTY WELLS LAW**  
Peter A. O'Flaherty

PAO/so

Encls.

Cc. Martin Scisizzi

Service accepted on  
May 20, 2016



2016 01G 3118

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION (GENERAL)

**BETWEEN:**

ANDRITZ HYDRO CANADA INC.

PLAINTIFF

**AND:**

MUSKRAT FALLS CORPORATION

DEFENDANT

**STATEMENT OF CLAIM**

**A. The Parties**

1. The plaintiff, Andritz Hydro Canada Inc. (“**Andritz**” or the “**Plaintiff**”) is a corporation incorporated pursuant to the laws of New Brunswick, with its registered office in Pointe-Claire, Québec. Andritz is a wholly owned subsidiary of Andritz AG of Graz Austria, and currently employs over 350 employees in its Canadian operations, which provide full engineering and project management for all Canadian and selected export projects as well as other services.

2. The defendant, Muskrat Falls Corporation (“**Muskrat**” or by the name of the department responsible for managing the Project, the Lower Churchill Project (“**LCP**”)), is a body corporate constituted pursuant to the *Corporation Act*, RSNL 1990, c. C-36, as amended, having its head office in St. John’s, Newfoundland & Labrador. It was incorporated on November 13, 2013 to design, develop, construct, finance, and operate the Muskrat Falls hydroelectric facility. Muskrat is a wholly owned subsidiary of Nalcor Energy (“**Nalcor**”).

**B. The Muskrat Falls Lower Churchill Project**

3. The lower Churchill River project at Muskrat Falls, Labrador (the “**Project**”) is a major hydroelectric development on the lower Churchill River in Newfoundland and Labrador, 40

kilometres from Goose Bay, Labrador. The Project consists of a hydroelectric dam on the lower Churchill River and supporting infrastructure to deliver power to consumers in Newfoundland & Labrador, neighbouring Quebec, and the Maritimes. It currently employs over 1,500 people for construction and, when complete, is expected to have a generating capacity of 824 megawatts of power.

4. The Project was originally conceived about forty years ago, after the upper Churchill Falls development was completed by Hydro-Quebec. After several decades of political and economic review, tendering for the Project was ultimately commenced in 2012 as described below.

### **C. The Gates Contract**

#### **(i) Andritz Tenders and is Awarded the Gates Contract**

5. In mid-2012, Nalcor approached Andritz in respect of the Project, and requested Andritz to submit a bid for the supply and installation of mechanical equipment (and in particular, mechanical gates) for powerhouse and spillway works (the “**Gates Works**”). Following an RFP for these Works in early 2013, Andritz submitted a bid in April 2013.

6. Negotiations were ongoing until the end of 2013. Nalcor had budgeted half the amount of Andritz’s bid for project completion and was looking for ways to reduce the costs and risk of the Gates Work. In or about September 2013, Andritz offered a price reduction valued at approximately \$5 million, with no corresponding reduction in the scope of work.

7. On December 18, 2013 Muskrat and Andritz entered into a spillway and powerhouse mechanical equipment agreement, entitled Supply and Install Powerhouse and Spillway Hydro-Mechanical Equipment, Agreement No CH0032-001 (the “**Gates Contract**”). The final contract price was \$204,938,732.

8. The Gates Contract was a component of a broader scope of work awarded to Andritz. Earlier in the year, on January 2, 2013, Andritz also entered into a Turbines & Generators Design, Supply and Install Agreement, Agreement No CH0030 with Muskrat for the design, procurement, and installation of the turbine generator for the Project. (the “**T&G Contract**”).

(ii) **Key Provisions of the Gates Contract**

9. The Gates Contract makes provision, *inter alia*, for changes to the scope of the Gates Works, and corresponding compensation, as well as dispute resolution and security through a letter of credit in favour of Muskrat. As discussed below, Muskrat failed to observe these key contractual provisions.

10. Under the Gates Contract, it is contemplated that upon issuance of a “Change Order” to amend the Gates Works and necessary compensation, the parties will negotiate the appropriate compensation and schedule, as set out in Article 26:

26.1 Company has the right to make a Change at any time and from time to time prior to the issuance of a Final Completion Certificate by issuing a Change Order. Compensation for a Change shall be determined in accordance with Exhibit 2 – Compensation and Exhibit 3 – Coordination Procedures

26.2 Contractor shall not perform and shall not be entitled to any compensation for a Change without a Change Order issued by Company to Contractor for the Change.

(...)

26.6 In the event the Parties fail to reach agreement on the pricing and impacts on resources and schedule with respect to a Change, Contractor shall perform the work specified in the Change Order as issued by Company and the Dispute will be handled in accordance with Article 39.

11. Exhibit 3 – Coordination Procedures, Article 8.2 of the Gates Contract sets out in detail the procedure by which the parties are to address cost and scheduling, namely through the submission of proposals by Andritz, and review and approval, rejection or request for resubmission by Muskrat. Similarly, under Article 8.3 the parties were to work out compensation under the rates and prices set out in Exhibit 2 - Compensation or “on a basis to be agreed” between Andritz and Muskrat.

12. Accordingly, while Muskrat is entitled to issue a Change to the scope of the Gates Works, it is not entitled to unilaterally imposed terms regarding pricing, resourcing or scheduling.

13. The Gates Contract also contains a scheme for the resolution of disputes between the parties (the “**Dispute Resolution Procedure**”). This is set out in Article 39:

- 4 -

39.1 If any dispute, controversy, claim, question or difference of opinion arises between the Parties under this Agreement including an interpretation, enforceability, performance, breach, termination or validity of this Agreement (“Dispute”), the Party raising the Dispute shall give Notice to the other Party in writing within thirty (30) days of the Dispute arising, and such Notice shall provide all relevant particulars of the Dispute.

14. Upon issuance of a Notice of the Dispute, Article 39.2 of the Gates Contract states that representatives of the parties must engage in meetings in good faith and in a commercially reasonable manner, with such meetings escalating from senior project managers to the senior executives of the respective companies.

15. Importantly, Article 39.3 of the Gates Contract prohibits the parties from taking any legal action before 90 days have elapsed from the date of delivery of a Notice of Dispute:

39.3 If the Dispute is not resolved by the Parties within ninety (90) days from the date of delivery of the Notice of Dispute then a Party may take whatever action is deemed appropriate pursuant to this Agreement. For greater certainty, the Parties must comply with this Article 39 before commencing any further action, legal or otherwise, with respect to a Dispute under this Agreement.

16. Lastly, under Article 7.3 of the Gates Contract Andritz was required to deliver to Muskrat a Letter of Credit in an amount equal to 10% of the original price of the Gates Contract to secure the performance of its obligations.

17. On January 8, 2014, Andritz established an Irrevocable Standby Letter of Credit issued by Royal Bank of Canada for the benefit of Muskrat in the amount of \$20,493,873 (the “**Letter of Credit**”). The Letter of Credit was originally issued for a period of one year, but is automatically extended for one year periods from the expiry date unless Royal Bank notifies Muskrat at least 60 days prior to the expiry date that it elects not to extend.

18. Muskrat has manifestly failed to observe the aforesaid key contractual provisions. In particular, by issuing a Notice of Default and threatening to call on the Letter of Credit for a purported default under the Gates Contract, Muskrat has failed to abide by the above provisions governing Change Orders and the Dispute Resolution Procedure.

**D. Delays in the Performance of the Gates Works**

19. The Project was broadly speaking structured through reference to “Milestones” as set out in Exhibit 9 to the Gates Contract. In particular, Milestone I1A envisioned installation of works to the upstream side of the spillway (“**Milestone I1A**”) and Milestone I1B envisioned installation of works to the downstream side of the spillway (“**Milestone I1B**”).

20. Beginning in March 2014, Andritz began delivering the first anchors for the Gates to the Site, on or around the agreed milestone dates. Throughout 2014, Andritz continued to progress its Work and deliver materials to the Site.

21. Milestone I1A, originally scheduled for February 15, 2015, refers to the point when Andritz would be able to enter and begin its Gates Work on the upstream side of the spillway. Reaching this milestone required Muskrat’s contractor, Astaldi Construction Corporation (“**Astaldi**”) to complete the underlying concrete foundations and other civil works before Andritz entered the area to set the anchors and install the Gates.

22. However, by the first half of 2014 it was obvious to Muskrat and Andritz that the civil works performed by Astaldi were delayed. Despite this delay to the civil works, Muskrat did not issue a Change Order adjusting the delivery schedule under Exhibit 9 of the Gates Contract.

23. Given the complexity of the upstream work, it was necessary to begin mobilization on Site by fall 2014 in order to be ready for the installation. Accordingly, on or about July 10, 2014, Andritz entered into a Supply and Install Subcontract for the Supply and Install Powerhouse and Spillway Mechanical Equipment, Agreement No CH0032-01 with a mechanical works subcontractor, Canmec Industries Inc. (“**Canmec**”).

24. On or about December 15, 2014, Muskrat wrote to Andritz and confirmed that Milestone I1A would be delayed until “late Q2 2015”, which was understood by Andritz to be approximately mid-May 2015. This delay in the schedule was formally extended on or about March 18, 2015 when Muskrat issued Change Order 6 (“**CO6**”), in which Muskrat delayed Milestone I1A indefinitely.

25. The new milestone dates were in fact not properly fixed until July 2015, when Muskrat re-issued a 90-day notice stipulating that the Project would be ready for the commencement of the downstream works (i.e. Milestone I1B) on September 1, 2015 and the upstream Gates Works (i.e. Milestone I1A) on November 1, 2015. This notice effectively switched the sequence of Milestones I1A.

26. Nevertheless, in an effort to assist with the schedule recovery, Andritz and Canmec agreed to begin working on the downstream portion of the Gates Works in the summer of 2015.

27. Recognizing the delay to Milestone I1A, Andritz also made several efforts through July to November, 2015 to establish an acceleration plan for the spillway works with Muskrat. These efforts were all rejected or ignored by Muskrat.

28. As of November, 2015, there was no agreement in place regarding acceleration and no Change Order instructing Andritz to accelerate the Gates Works. Milestone I1A had been delayed approximately nine months, from February 2015 to November 2015.

29. On November 1, 2015, Andritz was finally given access to the upstream portion of the Gates Works. Upon entering this area of the Site, it determined that Astaldi's civil works remained incomplete and, in certain cases, defective, contributing to further disruption and delay.

#### **E. Muskrat Issues the Change Order for Spillway and River Diversion Acceleration**

##### **(i) Muskrat Issues an Unilateral Change Order Contrary to Article 26**

30. On or about November 10, 2015, approximately two weeks after receiving Andritz' final acceleration proposal offer, Muskrat issued a Change Order (the "**Change Order**" or "**CO10**") instructing Andritz to accelerate the installation of the upstream spillway hydro-mechanical equipment. In particular, this work involved a diverse range of installation activities of hydro-mechanical equipment on a large concrete structure, consisting of six vertical walls that are approximately 40m high by 60m long. The first phase of the work requires the precise alignment of vertical guides that are embedded in the spillway. The second phase of the work involves the concreting and embedment of the guides from the top of the structure, requiring precise temperature control for concrete pouring. The final phase involves the erection of heavy steel

structures on concrete supports and the commissioning of the overall system. Once all of these steps are complete, the river may be diverted into the spillway (the “**Spillway Acceleration**”).

31. In breach of Article 26 of the Gates Contract, CO10 purported to bind Andritz to a fixed deadline and price for the Change Order. Specifically, it stated as follows:

Company directs Contractor to accelerate the installation of the spillway hydro-mechanical equipment [...] to meet the river diversion requirements on/or before 15 June 2016. This change order covers all additional costs for the acceleration of Andritz’ baseline schedule installation logic and deductions, including but not limited to the costs for:

1. Increase staff, supervision, and indirect expenses;
2. Additional labour, including sub-contractor costs and overtime;
3. Additional small tools, PPE, and consumables;
4. Additional equipment hours; and
5. Lost productivity due to winter working conditions and all productivity impacts associated with the acceleration.

Payment to cover the cost of the acceleration shall be on a lump sum basis and shall be made progressively based on the physical progress of the Work.

If completion of the installation of the spillway hydro-mechanical equipment for river diversion is achieved on/or before 15 June 2016, [LCP] will issue a separate Change Order to pay [Andritz] an incentive payment of \$2,000,000. If [Andritz] fails to achieve the date of 15 June 2016 for any reason whatsoever, [LCP] will have no obligation to make the incentive payment. [...]

32. The total price of CO10 was listed as a single, lump sum of \$3,370,314 million to cover all additional costs for the acceleration. This sum is grossly inadequate.

33. The Gates Contract allowed Andritz approximately one year to complete its work at the spillway. Muskrat’s request to complete the same works between November 1, 2010 and June 15, 2016 resulted in a time for completion that was shortened by 4 to 5 months, and had been shifted to the much more difficult winter period.

34. Andritz objected to the purported deadline, pricing, and payment terms, which had been determined unilaterally without reference to Article 26 of the Gates Contract and its related



Exhibits, and imposed in breach of the Gates Contract. This total price was well below the amounts proposed by Andritz to Muskrat while exchanging proposals in the summer of 2015. It was wholly insufficient for the Spillway Acceleration works demanded in CO10.

**(ii) Andritz takes Good Faith Actions to Implement the Change Order**

35. Nevertheless, Andritz immediately complied with the Change Order as required by the Gates Contract. On or about November 16, 2014, Andritz notified Muskrat that it had accelerated its installation of the spillway hydro-electrical equipment and had directed its subcontractors to do the same immediately.

36. The imposed deadline of June 15, 2016 was aggressive and, in Andritz' view, likely unattainable on Muskrat's stated budget. However, despite the challenges of working in harsh, winter conditions, as well as unforeseen repair work and disruptions arising from Astaldi's civil works, Andritz successfully engaged in the Spillway Acceleration. Working in the Labrador winter resulted in predictably lower productivity of labour and far more complicated logistics.

37. Muskrat had waited months to issue a formal Change Order (CO10), when it was clear well in advance that acceleration would be necessary. The late issuance of CO10 in November 2015 undermined Andritz' ability to fully prepare the necessary resources to meet the significantly accelerated schedule.

38. On or about November 24, 2015, Andritz formally objected to the terms of CO10. In response to Andritz' formal objection, Muskrat continued to insist on a June 15, 2016 completion date for the acceleration works instructed under the Change Order. On December 18, 2015 Andritz replied that it would work towards this deadline on a "best efforts basis" only. It continued to submit invoices and proposals reflecting its actual cost of the work. Muskrat has failed or refused to pay such invoices.

**(iii) Muskrat issues a Notice of Default and Threatens to Call on the Letter of Credit**

39. On or about March 4, 2016, Muskrat delivered to Andritz a purported Notice of Default (the "Notice of Default"). In the Notice of Default, Muskrat threatened to call upon the Letter of

Credit to pay for “losses” caused by Andritz’s “failure to complete by June 15, 2016.” Apart from being glaringly premature, the threatened call on the Letter of Credit ignored the express language of the Dispute Resolution Procedure.

40. In threatening to call upon the Letter of Credit, Muskrat ignored Article 39.3 of the Gates Contract which prohibits a party from taking further legal action with respect to a Dispute without first engaging in the Dispute Resolution Procedure, and in particular the clear language precluding such action being taken within 90 days of a delivery of Notice of Dispute.

41. On March 8, 2016, Andritz responded to Muskrat by stating that the Notice of Default was invalid and reiterating its position that Muskrat had not issued a valid change order. Despite this, Andritz continued to work diligently towards a Spillway Acceleration completion date of June 15, 2016.

42. On March 17, 2016, Muskrat again threatened to call on the Letter of Credit if the alleged default was not remedied. Muskrat took the untenable position that recourse against the Letter of Credit could be made by Muskrat “at any time without further notice” to Andritz.

43. The next day, Andritz again reiterated its position that it was working towards a completion date of June 15, 2016, and to that end provided commitment letters from its sub-contractors. Andritz further provided a revised schedule with a completion date of June 15, 2016.

44. While the Dispute Resolution Procedure has been held in abeyance by the inaction of Muskrat, Andritz has continued its best efforts to meet the deadlines unilaterally imposed by Muskrat. On March 31, 2016, Andritz reiterated its commitment to complete the work by June 15, 2016 and set out its record on this commitment, despite the difficulties in meeting this date.

45. Andritz initiated a request for a “first level meeting” as required by the Dispute Resolution Procedure under the Gates Contract. This invitation was rebuffed in a Muskrat letter dated April 14, 2016.

46. Despite these efforts by Andritz to resolve the dispute, Muskrat’s position has hardened and regressed. On April 18, 2016, it outlined its position that Andritz is actually not entitled to any

amount in excess of the “Lump Sum Change Order amount” (i.e. \$3,370,314) stipulated in CO10 and disputed several subsequent invoices.

47. Accordingly, Andritz issued a Notice of Dispute dated April 20, 2016, over Muskrat’s failure to properly compensate Andritz for its work on CO10. Andritz followed this letter with confirmation of the Dispute regarding the threatened call upon the Letter of Credit on April 21, 2016.

48. The parties have since begun first level meetings, without reaching any resolution.

49. As a result, as of the date of this Statement of Claim, not only do Muskrat’s threats against the Letter of Credit remain in place, but Muskrat continues to refuse to pay any more than a nominal amount for the work performed to date.

#### **F. Breach of Contract**

##### **(i) The Change Order Fails to Comply with Article 26 of the Gates Contract**

50. The Change Order contains an unilateral imposition of unrealistic deadline, cost, and payment terms, contrary to Article 26 and related Exhibits of the Gates Contract. Muskrat failed to utilize the procedure mandated by the Gates Contract, in particular that found in Exhibits 2 and 3 as referenced in Article 26.

51. The Gates Contract does not allow a deadline, cost, and payment mechanism to be unilaterally imposed. This would permit Muskrat, as it has done here, to insist upon a deadline that cannot realistically be met and without regard to the legitimate expectations of Andritz, and in turn impermissibly call on the Letter of Credit.

52. A unilaterally imposed deadline and price, contrary to Article 26 of the Gates Contract, would have the effect of allowing Muskrat to effectively call on the Letter of Credit at its sole and unfettered discretion. This was not the intention of the parties when entering the Gates Contract and produces a commercially absurd result.

53. Muskrat failed to engage in the negotiation process stipulated by Article 26 of the Gates Contract, and in fact has failed to cooperate with Andritz in reaching an accommodation with

respect to the Spillway Acceleration, and either rejected or ignored Andritz' prior good faith efforts to establish an acceleration plan for the spillway to remedy the delay to Milestone II A.

54. Accordingly, the purported scheduling and price demands contained in the Change Order are invalid and of no force and effect.

**(iii) Andritz is Not in Default under the Gates Contract**

55. In the alternative, and assuming that the contents of the Change Order are valid and binding on Andritz, which is denied, Andritz is not in default under the Gates Contract and the purported Notice of Default is invalid.

56. Among other things, Andritz relies upon the fact that the purported deadline of June 15, 2016 for completion under CO10 has not in fact elapsed, which renders the Notice of Default speculative and premature.

57. Moreover, Andritz has made good faith efforts to strictly comply with the requirement under Article 26 of the Gates Contract that the contractor proceed with the requested Spillway Acceleration in the interim while the Change Order is being disputed. In fact, Andritz has made significant progress to completing the Spillway Acceleration in the month of July, 2016.

**(iv) Muskrat has Failed to Observe the Dispute Resolution Procedure**

58. Muskrat has failed to observe and engage in the Dispute Resolution Procedure, which provides for a series of escalated meetings in good faith between representatives of the parties. Article 39 of the Gates Contract also expressly maintains that no further action may be taken before 90 days have elapsed from the issuance of a Notice of Dispute.

59. Following its delivery of Notice of Default, Muskrat made no effort to engage in the required dispute resolution meetings. To the contrary, Muskrat took the unreasonable position that absent a cure by Andritz within ten business days, Muskrat would immediately call on the Letter of Credit.

60. Andritz has been forced to trigger the Dispute Resolution Procedure, yet Muskrat has maintained its intransigence, refusing to engage in any meaningful way at the first level of meetings.

**(v) Muskrat Cannot Lawfully Draw upon the Letter of Credit**

61. Muskrat has threatened to call on the Letter of Credit notwithstanding the clear prohibition contained in Article 39 of the Gates Contract.

62. Article 36 of the Gates Contract specifically provides that liquidated damages constitute Muskrat's sole and exclusive remedy for any purported delay in Andritz' performance, and failure to meet set Milestones.

63. Moreover, and for the reasons set out above, the Change Order is invalid and Andritz is not in default under the Gates Contract. Accordingly, there is no lawful basis upon which Muskrat may call for payment on the Letter of Credit.

**G. Irreparable Harm**

64. If Muskrat calls on the Letter of Credit it would cause irreparable harm to Andritz. Among other things, the threatened call would likely cause the following adverse consequences for Andritz:

i) a call on a Letter of Credit is an extraordinary development in a construction project – akin to termination – that would attract the attention of the entire hydro power industry both within Canada and abroad;

ii) Andritz' reputation in the marketplace would be adversely affected. A call on a Letter of Credit immediately indicates the contractor is in financial difficulty, whether the call was justified or not. This “chilling effect” in respect of current and future clients is particularly damaging in an industry (hydroelectric works) that involves only one or two new projects annually nationwide, which are generally complex and high value. Losing out on a project because of a perceived performance blemish or “risky” profile can result in years of negative commercial consequences;

iii) Andritz' bank will likely require the other existing standby letter of credit for the Project to remain funded going forward, resulting in a permanent cash burden on Andritz that was never previously anticipated;

iv) the Andritz Group would be required to step in to financially back the call and maintain Andritz' solvency, thereby pushing Andritz into significant debt to its related companies;

v) Andritz will have significant difficulty attracting and maintaining personnel and staff, which would permanently affect Andritz' ability to progress the Project and compete in the marketplace. Competitor companies will recruit Andritz personnel more aggressively and it would be difficult to attract new hires. In essence, there would be permanent, harmful staffing consequences for the Project and for Andritz as a whole; and

vi) Andritz possesses credible grounds to be concerned that if the payment is made to Muskrat pursuant to the Letter of Credit, it is unlikely that Andritz will be able to recover the payment if it is later found that Muskrat was not entitled to call upon payment. Muskrat, as a special purpose vehicle with increasing debt obligations and claims against it, would likely be required to use the funds from a call towards existing obligations. There is a credible reason for uncertainty that, upon adjudication of this litigation, the funds that Muskrat drew down from the Letter of Credit would not be available for Andritz to recover if it was ultimately vindicated in its position that a call is premature and unwarranted.

65. The balance of convenience favours the relief sought by the Plaintiff.

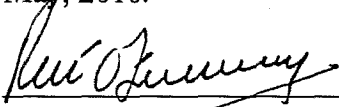
**AND THE PLAINTIFF claims:**

- (i) A declaration that the unilateral imposition of schedule and price under the Change Order is invalid under Article 26 of the Gates Contract;
- (ii) A declaration that Andritz is not in default under the Gates Contract, and the purported Notice of Default of March 4, 2016 is of no force or effect;
- (iii) A declaration that Muskrat is not entitled to call for payment on the Letter of Credit;

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- (iv) An interim and interlocutory injunction restraining the Defendant from calling on the Letter of Credit;
- (v) Costs of this action; and
- (vi) Such further and other relief as this Honourable Court may deem just.

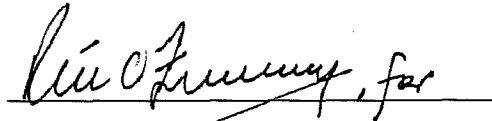
**DATED** at the City of St. John's, in the Province of Newfoundland and Labrador this 18th day of May, 2016.



**O'FLAHERTY WELLS LAW**  
Barristers and Solicitors  
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**Peter O'Flaherty** (LSNL #775)  
Tel: (709) 754-1476  
Fax: (709) 754-0837

Agent for the Plaintiff, Andritz Hydro  
Canada Inc.



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Barristers and Solicitors  
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Lawyers for the Plaintiff Andritz Hydro  
Canada Inc.

TO: **Muskrat Falls Corporation**  
350 Torbay Road Plaza, Suite No. 2  
St. John's NL, Canada  
A1A 4E1  
Attention: Scott O'Brien, Project Manager

**ISSUED** at the City of St. John's, in the Province of Newfoundland and Labrador this 18th day of May, 2016.

  
**Trial Co-Ordinator**



2016 01G

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION (GENERAL)**

**BETWEEN:**

**ANDRITZ HYDRO CANADA INC.**

**PLAINTIFF**

**AND:**

**MUSKRAT FALLS CORPORATION**

**DEFENDANT**

**NOTICE TO DEFENDANT**

You are hereby notified that the Plaintiff may enter Judgment in accordance with the Statement of Claim or such order as, according to the practice of the Court, the Plaintiff is entitled to, without any further notice to you unless within ten (10) days after service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland and Labrador at St. John's a Defence and unless within the same time a copy of your Defence is served upon the Plaintiff or the Plaintiff's solicitor at the Plaintiff's solicitor's stated address for service.

**To:** Muskrat Falls Corporation  
350 Torbay Road Plaza, Suite No. 2  
St. John's NL, Canada  
A1A 4E1  
Attention: Scott O'Brien, Project Manager

**And to:** The Registrar  
Supreme Court of Newfoundland and Labrador  
Trial Division (General)  
313 Duckworth Street  
St. John's, NL A1C 5M3

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2016 01G

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION (GENERAL)

BETWEEN:

ANDRITZ HYDRO CANADA INC.

PLAINTIFF

AND:

MUSKRAT FALLS CORPORATION

DEFENDANT

AFFIDAVIT OF SERVICE

I, \_\_\_\_\_, of \_\_\_\_\_, in  
the Province of Newfoundland and Labrador, make oath and say as follows:

1. On \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 2016 at  
approximately  
\_\_\_\_\_ am/pm, I served \_\_\_\_\_ with the Statement  
of Claim  
by leaving a copy with \_\_\_\_\_ at  
\_\_\_\_\_.

2. I was able to identify the person by means of  
\_\_\_\_\_.

**SWORN TO** at \_\_\_\_\_, in the Province  
of Newfoundland and Labrador, this  
\_\_\_\_\_ day of \_\_\_\_\_, 2016,  
before me:

\_\_\_\_\_  
\_\_\_\_\_

Service accepted  
on May 20, 2016.

2016 01G 3118

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION (GENERAL)

**BETWEEN:**

ANDRITZ HYDRO CANADA INC.

APPLICANT

**AND:**

MUSKRAT FALLS CORPORATION

RESPONDENT

INTERLOCUTORY APPLICATION  
(INTER PARTES)

SUMMARY OF CURRENT DOCUMENT	
Court File Number:	2016 01G
Date of Filing of Document:	May 19, 2016
Name of Filing Party or Person:	Martin Scisizzi, Bevan Brooksbank and Hugh Meighen on behalf of the Applicant
Application to which Document relates:	Application for an Interim, Interlocutory Injunction under Rules 22.01 and Rule 29
Statement of Purpose in Filing:	In Support of Application

The Application of the plaintiff, ANDRITZ HYDRO CANADA INC. (“Andritz” or “the Applicant”) says:

**NATURE OF APPLICATION**

1. Andritz seeks an Order:

- (i) for an interim and interlocutory injunction pursuant to Rule 22.01 of the *Rules of the Supreme Court, 1986*, enjoining and restraining the Respondent, Muskrat Falls Corporation (“Muskrat” also carrying on business as Lower Churchill Project or “LCP”) from calling on a Letter of Credit, performance number 10001752 dated January 8, 2014 pending the final disposition of the within action;

Filed	May 19 2016	JS
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- (ii) if necessary, granting an abridgement of the time for service and filing of the application materials;
- (iii) granting the moving party its costs of the application on a substantial indemnity basis; and
- (iv) such further relief as counsel may request and this Honourable Court may deem just.

## GROUNDS FOR THE APPLICATION

### Background

#### i) The Parties

2. The Applicant, Andritz Hydro Canada Inc. (“**Andritz**”), is a corporation incorporated pursuant to the laws of New Brunswick, with its registered office in Pointe-Claire, Québec. Andritz is a wholly owned subsidiary of Andritz AG of Graz Austria, and currently employs over 350 employees in its Canadian operations, which provide full engineering and project management for all Canadian and selected export projects as well as other services.

3. Muskrat is a body corporate constituted pursuant to the *Corporation Act*, RSNL 1990, c. C-36, as amended, having its head office in St. John’s, Newfoundland & Labrador. It was incorporated on November 13, 2013 to design, develop, construct, finance, and operate the Lower Churchill Muskrat Falls hydroelectric facility.

4. Muskrat is a wholly-owned subsidiary of Nalcor Energy (“**Nalcor**”).

#### ii) The Lower Churchill Muskrat Falls Project

5. The Lower Churchill Muskrat Falls hydroelectric project (the “**Project**”) is a major hydroelectric development on the lower Churchill River in Newfoundland and Labrador, located approximately 40km from Goose Bay, Labrador. The Project consists of a hydroelectric dam and supporting infrastructure to deliver power to consumers in Newfoundland and Labrador, neighbouring Quebec, and the Maritimes. It currently employs over 1,500 people for the

construction phase and, when complete, is expected to have a total generating capacity of 824 megawatts of power.

6. The development of the Project was originally considered about forty years ago, following the completion of the Churchill Falls generating station. As it has developed, the Project is comprised of several distinct components involving both a hydroelectric dam and the supporting infrastructure. After several decades of political and economic review, tendering for these Project components was ultimately commenced in 2012, including that pertaining to Andritz, as described below.

**iii) The Gates Contract and Letter of Credit**

7. In mid-2012, Nalcor approached Andritz in respect of the Project, and requested Andritz to submit a bid for the supply and installation of mechanical equipment (and in particular, mechanical gates) for powerhouse and spillway works (the “**Gates Works**”). Following an RFP for these Works in early 2013, Andritz submitted a bid in April 2013.

8. On December 18, 2013 Muskrat and Andritz entered into a spillway and powerhouse mechanical equipment agreement, entitled Supply and Install Powerhouse and Spillway Hydro-Mechanical Equipment, Agreement No CH0032-001 (the “**Gates Contract**”). The final contract price was \$204,938,732.

9. Among other things, the Gates Contract makes provision for changes to the scope of the Gates Work, and corresponding compensation. It is contemplated that upon issuance of a “Change Order”, the parties will negotiate the appropriate compensation and schedule, as set out in Article 26:

26.1 Company has the right to make a Change at any time and from time to time prior to the issuance of a Final Completion Certificate by issuing a Change Order. Compensation for a Change shall be determined in accordance with Exhibit 2 – Compensation and Exhibit 3 – Coordination Procedures

26.2 Contractor shall not perform and shall not be entitled to any compensation for a Change without a Change Order issued by Company to Contractor for the Change.

(...)

26.6 In the event the Parties fail to reach agreement on the pricing and impacts on resources and schedule with respect to a Change, Contractor shall perform the work specified in the Change Order as issued by Company and the Dispute will be handled in accordance with Article 39.

10. Exhibit 3 – Coordination Procedures, Article 8.2 of the Gates Contract sets out in detail the procedure by which the parties are to address cost and scheduling, namely through the submission of proposals by Andritz, and review and approval, rejection or request for resubmission by Muskrat. Similarly, under Article 8.3 the parties were to work out compensation under the rates and prices set out in Exhibit 2 - Compensation or “on a basis to be agreed” between Andritz and Muskrat.

11. The Gates Contract also contains a scheme for the resolution of disputes (the “**Dispute Resolution Procedure**”). This is set out in Article 39:

39.1 If any dispute, controversy, claim, question or difference of opinion arises between the Parties under this Agreement including an interpretation, enforceability, performance, breach, termination or validity of this Agreement (“Dispute”), the Party raising the Dispute shall give Notice to the other Party in writing within thirty (30) days of the Dispute arising, and such Notice shall provide all relevant particulars of the Dispute.

12. Upon issuance of a Notice of the Dispute, Article 39.2 of the Gates Contract states that representatives of the parties must engage in meetings in good faith and in a commercially reasonable manner, with such meetings escalating from senior project managers to the senior executives of the respective companies.

13. Importantly, Article 39.3 of the Gates Contract prohibits the parties from taking any legal action before 90 days have elapsed from the date of delivery of a Notice of Dispute:

39.3 If the Dispute is not resolved by the Parties within ninety (90) days from the date of delivery of the Notice of Dispute then a Party may take whatever action is deemed appropriate pursuant to this Agreement. For greater certainty, the Parties must comply with this Article 39 before commencing any further action, legal or otherwise, with respect to a Dispute under this Agreement.

14. Under Article 7.3 of the Gates Contract Andritz was required to deliver to Muskrat a Letter of Credit in an amount equal to 10% of the original price of the Gates Contract to secure the performance of its obligations.

15. On January 8, 2014, Andritz established an Irrevocable Standby Letter of Credit with Royal Bank of Canada for the benefit of Muskrat in the amount of \$20,493,873 (the “**Letter of Credit**”). The Letter of Credit was originally issued for a period of one year, but is automatically extended for one year periods from the expiry date unless Royal Bank notifies Muskrat at least 60 days prior to the expiry date that it elects not to extend.

16. Muskrat has manifestly failed to observe the aforesaid key contractual provisions of the Gates Contract. In particular, by threatening to call upon the Letter of Credit for a purported default under the Gates Contract, Muskrat has failed to abide by the above provisions governing Change Orders and the Dispute Resolution Procedure.

**iv) The Project is Delayed**

17. The Project was broadly speaking structured through reference to “Milestones” as set out in Exhibit 9 to the Gates Contract. In particular, Milestone I1A envisioned installation of works to the upstream side of the spillway (“**Milestone I1A**”) and Milestone I1B envisioned installation of works to the downstream side of the spillway (“**Milestone I1B**”).

18. Beginning in March 2014, Andritz began delivering the first anchors for the Gates to the Site, on or around the agreed milestone dates. Throughout 2014, Andritz continued to progress its Gates Work and deliver materials to the Site.

19. Milestone I1A, originally scheduled for February 15, 2015, refers to the point when Andritz would be able to enter and begin its Gates Works on the upstream side of the spillway. Reaching this milestone required Muskrat’s contractor, Astaldi Construction Corporation (“**Astaldi**”) to complete the underlying concrete foundations and other civil works before Andritz entered the area to set the anchors and install the Gates.

20. However, by the first half of 2014 it was obvious to Andritz and Muskrat that the civil works performed by Astaldi were delayed. Despite this delay to the civil works, Muskrat did not issue a Change Order adjusting the delivery schedule under Exhibit 9 of the Gates Contract.

21. Given the complexity of the upstream work, it was necessary to begin mobilization on Site by fall 2014 in order to be ready for the installation. Accordingly, on or about July 10, 2014,

Andritz entered into a Supply and Install Subcontract for the Supply and Install Powerhouse and Spillway Mechanical Equipment, Agreement No CH0032-01 with a mechanical works subcontractor, Canmec Industries Inc. (“Canmec”).

22. On or about December 15, 2014, Muskrat wrote to Andritz and confirmed that Milestone I1A would be delayed until “late Q2 2015”, which was understood by Andritz to be approximately mid-May 2015. This delay in the schedule was formally extended on or about March 18, 2015 when Muskrat issued Change Order 6 (“CO6”), in which Muskrat delayed Milestone I1A indefinitely.

23. The new milestone dates were in fact not properly fixed until July 2015, when Muskrat re-issued a 90-day notice stipulating that the Project would be ready for the commencement of the downstream works (i.e. Milestone I1B) on September 1, 2015 and the upstream Gates Works (i.e. Milestone I1A) on November 1, 2015. This notice effectively switched the sequence of the Milestones.

24. Nevertheless, in an effort to assist with the schedule recovery, Andritz and Canmec agreed to begin working on the downstream portion of the Gates Works in the summer of 2015.

25. Recognizing the delay to Milestone I1A, Andritz made several efforts to establish an acceleration plan for the spillway works with Muskrat. These efforts were all rejected or ignored by Muskrat.

26. As of October, 2015, there was no agreement in place regarding acceleration and no Change Order instructing Andritz to accelerate the Gates Works. Milestone I1A had been delayed approximately nine months, from February 2015 to November 2015.

27. On November 1, 2015, Andritz was finally given access to the upstream portion of the Gates Works. However upon entering this area of the Site, it was determined that Astaldi’s civil works remained incomplete and, in certain cases, defective, contributing to further disruption and delay.

28. In the interim, the Project suffered from successive substantial costs overruns, and delays in the schedule for completion of the Project. By September, 2015 the Oversight Committee Report



of the provincial government had identified myriad problems, and indicated that the acceleration of the spillway and river diversion was critical to salvaging the Project.

### **The Muskrat Change Order and Threatened Draw on the Letter of Credit**

#### **i) LCP Issues an Unilateral Change Order, Contrary to the Gates Contract**

29. On or about November 10, 2015, Muskrat issued Change Order 10 (the “**Change Order**” or “**CO10**”), instructing Andritz to accelerate installation of the spillway hydro-mechanical equipment (“**Spillway Acceleration**”) to “meet the river diversion requirements on/or before 15 June 2016”. In particular, the Spillway Acceleration entailed a diverse range of installation activities of hydro-mechanical equipment on a large concrete structure, consisting of six vertical walls that are approximately 40m high by 60m long. The first phase of the work requires the precise alignment of vertical guides that are embedded in the spillway. The second phase of the work involves the concreting and embedment of the guides from the top of the structure, requiring precise temperature control for concrete pouring. The final phase involves the erection of heavy steel structures on concrete supports and the commissioning of the overall system. Once all of these steps are complete, the river may be diverted into the spillway.

30. Muskrat further advised that it would pay an additional \$3,370,314 to Andritz to cover the costs associated with the acceleration. This sum is grossly inadequate.

31. The Change Order, and in particular its unilateral imposition of price and deadline, was contrary to Article 26 and its related Exhibits under the Gates Contract.

32. Andritz accordingly responded to CO10 by indicating that it had begun the Spillway Acceleration but did not accept Muskrat’s unilaterally imposed deadline, payment terms, and price. Andritz explained that Spillway Acceleration would be possible for a July 15, 2015 deadline, but that such an acceleration would cost in excess of \$10 million (had it been commenced on November 1, 2015).

33. Despite the dispute surrounding the validity of CO10 under Article 26 of the Gates Contract, Andritz proceeded with the Spillway Acceleration. Andritz engaged in such performance notwithstanding the fact that the CO10 terms were practically impossible to fulfill. The imposed

deadline of June 15, 2016 was aggressive and, in Andritz' view, unattainable on Muskrat's stated budget.

34. Among other things, since Alstaldi was still completing the upstream works, and had hastily completed works that would need repairs, Andritz incurred additional delays after its upstream mobilization.

35. Crucially, the Spillway Acceleration had to take place in the winter. Given the harsh climate of central Labrador in winter, and Christmas holiday period for two weeks in December, the productivity of labour was lower during this period and the logistics were far more complicated.

36. Muskrat had waited months to issue a formal Change Order (CO10), when it was clear well in advance that acceleration would be necessary. The late issuance of CO10 in November 2015 undermined Andritz' ability to fully prepare the necessary resources to meet the significantly accelerated schedule.

37. Andritz made two proposals to Muskrat on December 4 and December 18, 2015, with detailed cost breakdowns for completion dates of June 30, 2016, and June 15, 2016, respectively. It was explained that the Spillway Acceleration target date of June 15, 2016 would require additional costs in excess of \$11 million, as compared to the \$3,370,314 in CO10.

38. Muskrat failed to engage with these good faith efforts by Andritz to reach an agreement and put the Spillway Acceleration and CO10 on a valid footing under Article 26 of the Gates Contract.

**ii) LCP Delivers a Notice of Default and Ignores the Dispute Resolution Procedure**

39. On March 4, 2016, Muskrat delivered to Andritz a purported Notice of Default (the "**Notice of Default**") for, *inter alia*, an alleged failure to execute the works in a timely manner and failure to appropriately address and resolve concerns regarding the June 15, 2016 deadline, despite the deadline, price, and payment terms being unilaterally imposed. Muskrat threatened to call on the Letter of Credit to pay for "losses" caused by Andritz' "failure to complete by June 15, 2016."

40. In threatening to call upon the Letter of Credit, Muskrat ignored Article 39.3 of the Gates Contract which prohibits a party from taking further legal action with respect to a Dispute without first engaging in the Dispute Resolution Procedure, and in particular the clear language precluding such action being taken within 90 days of a delivery of Notice of Dispute.

41. On March 8, 2016, Andritz responded by stating that the Notice of Default was invalid and reiterating its position that Muskrat had not issued a valid change order. Despite this, Andritz continued to work diligently towards a Spillway Acceleration completion date of June 15, 2016.

42. On March 17, 2016, Muskrat again threatened to call on the Letter of Credit if the alleged default was not remedied. Muskrat took the untenable position that recourse against the Letter of Credit could be made by Muskrat "at any time without further notice" to Andritz.

43. The next day, Andritz again reiterated its position that it was working towards a completion date of June 15, 2016, and to that end provided commitment letters from its sub-contractors. Andritz further provided a revised schedule with a completion date of June 15, 2016.

44. While the Dispute Resolution Procedure has been held in abeyance by the inaction of Muskrat, Andritz has continued its best efforts to meet the deadlines unilaterally imposed by Muskrat.

45. Andritz initiated a request for a "first level meeting" as required by the Dispute Resolution Procedure under the Gates Contract. This invitation was rebuffed in a Muskrat letter dated April 14, 2016.

46. Despite these efforts by Andritz to resolve the dispute, Muskrat's position has hardened and regressed. On April 18, 2016, it outlined its position that Andritz is actually not entitled to any amount in excess of the "Lump Sum Change Order amount" (i.e. \$3,370,314) stipulated in CO10 and disputed several subsequent invoices.

47. Accordingly, Andritz issued a Notice of Dispute dated April 20, 2016, over Muskrat's failure to properly compensate Andritz for its work on CO10. Andritz followed this letter with confirmation of the Dispute regarding the threatened call upon the Letter of Credit on April 21, 2016.

48. The parties have since begun first level meetings, without reaching any resolution.
49. As a result, as of the date of this Application, not only do Muskrat's threats against the Letter of Credit remain in place, but Muskrat continues to refuse to pay any more than a nominal amount for the work performed to date.
50. In light of the above, Andritz commenced the within proceeding by way of a Statement of Claim issued on May 18, 2016.

**Drawing on the Letter of Credit will Cause Serious and Permanent Harm to Andritz**

**i) Strong *Prima Facie* Case: Calling on the Letter of Credit will be Akin to Fraud**

51. Calling on the Letter of Credit will be tantamount to fraud in the face of
- i) the unilateral imposition of unrealistic deadline, cost, and payment terms in CO10, contrary to Article 26 and related Exhibits of the Gates Contract;
  - ii) the fact that the purported deadline of June 15, 2016 for completion under CO10 has not in fact elapsed, rendering the purported Notice of Default speculative and premature;
  - iii) the fact that Andritz is accordingly not in default under the Gates Contract;
  - iv) the fact that Article 36 of the Gates Contract stipulates that payment of liquidated damages is the sole and exclusive remedy of Muskrat for any delay in the performance of the Gates Contract, and failure to meet Milestones under same; and
  - v) the failure of Muskrat to observe and engage in the Dispute Resolution Procedure, which expressly maintains that no further action may be taken before 90 days have elapsed from the issuance of a Notice of Dispute.

52. The Gates Contract does not allow a deadline, cost, and payment mechanism to be unilaterally imposed. This would permit Muskrat, as it has done here, to insist upon a deadline

without regard to the legitimate expectations of Andritz, and in turn arbitrarily call upon the Letter of Credit.

53. Andritz possesses a strong *prima facie* case with respect to the validity of CO10 and the purported Notice of Default. A unilaterally imposed deadline and price, contrary to Article 26 of the Gates Contract, would have the effect of allowing Muskrat to effectively call in the Letter of Credit at its sole and unfettered discretion. This was not the intention of the parties when entering the Gates Contract and produces a commercially absurd result.

**ii) Andritz will be Irreparably Harmed if Muskrat Calls on the Letter of Credit**

54. If Muskrat calls on the Letter of Credit it would cause irreparable harm to Andritz.

55. While letters of credit are a typical element of nearly all major infrastructure construction projects in Canada, they are very rarely called upon. A call on a Letter of Credit is an extraordinary development in a construction project – akin to termination – that would attract the attention of the entire hydro power industry both within Canada and abroad.

56. In addition, Andritz' reputation in the marketplace would be adversely affected. A call on a Letter of Credit immediately indicates the contractor is in financial difficulty, whether the call was justified or not. Given how connected the hydro community is in Canada, all current and future potential clients would be expected to learn of the call and view Andritz as high risk and potentially unable to deliver on its projects. This “chilling effect” in respect of current and future clients is particularly damaging in an industry (hydroelectric works) that involves only one or two new projects annually nationwide, which are generally complex and high value. Losing out on a project because of a perceived performance blemish or “risky” profile can result in years of negative commercial consequences.

57. Upon a call on the Letter of Credit, the Andritz Group would be required to step in to financially back the call and maintain Andritz' solvency, thereby pushing Andritz into significant debt to its related companies.

58. Andritz' bank may require the other existing standby letter of credit for the Project to remain fully funded going forward, resulting in a permanent cash burden on Andritz that was never previously anticipated.

59. Importantly, Andritz will have significant difficulty attracting and maintaining personnel and staff, which would permanently affect Andritz' ability to progress the Project and compete in the marketplace. The Project is already a difficult location to staff given the remoteness of the Site, the difficulty of the conditions, and the contentious current relationship with Muskrat. If the Letter of Credit is called on, there is a risk that Andritz will lose key employees and be extremely hindered in retaining qualified personnel. Competitor companies will recruit Andritz personnel more aggressively and it would be difficult to attract new hires. In essence, there would be permanent, harmful staffing consequences for the Project and for Andritz as a whole.

60. Andritz possesses a credible reason for uncertainty that if the payment is made to Muskrat pursuant to the Letter of Credit, there is a serious risk that Andritz will be unable to recover the payment if it is later found that Muskrat was not entitled to call upon payment. Muskrat, as a special purpose vehicle with increasing debt obligations and claims against it, would likely be required to use the funds from a call towards existing obligations. It is extremely doubtful that, upon adjudication of this litigation, the funds that Muskrat drew down on the Letter of Credit would still be available for Andritz to recover, if it was ultimately vindicated in its position that a call is premature and unwarranted.

**iii) The Balance of Convenience Favours Andritz**

61. The balance of convenience favours an interim interlocutory injunction prohibiting Muskrat from calling on the Letter of Credit. If the Letter of Credit is called on, but it is ultimately found that the Change Order and Notice of Default are invalid, Muskrat will have had the advantage of possessing Andritz' \$20.4 million on an improper and wrongful basis. In addition, Andritz will be forced to commence proceedings to recover the funds that were improperly claimed by Muskrat.

62. Conversely, Muskrat will not be prejudiced by being precluded from drawing on the Letter of Credit, the entitlement to which rests on legal findings placed in issue by the Andritz Statement

of Claim. Further, the Letter of Credit issued by Royal Bank of Canada will remain as valid security in the interim. The relief sought will merely delay the right of Muskrat, if any, to make the call on the security pending adjudication and final disposition of the action.

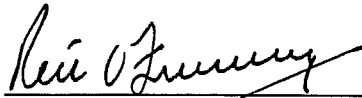
63. *Rules of the Supreme Court, 1986*, Rules 3.03, Rule 22.01, Rule 29.01, and Rule 55.05.

64. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

1. The Affidavit of Daniel Carrier, sworn May 17, 2016, and the exhibits thereto;
2. The pleadings and proceedings herein; and
3. Such further and other evidence as counsel may advise and this Honourable Court may permit.

**DATED** at the City of St. John's, in the Province of Newfoundland and Labrador this 18th day of May, 2016.



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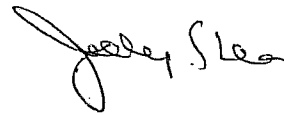
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Lawyers for the Applicant

TO: **Muskrat Falls Corporation**  
350 Torbay Road Plaza, Suite No. 2  
St. John's NL, Canada  
A1A 4E1  
Attention: Scott O'Brien, Project  
Manager

ISSUED AT St John's in the  
Province of Newfoundland and Labrador,  
this 19 day of May, A.D., 2016.



COURT  
OFFICER



2016 01G 3118

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION (GENERAL)

**BETWEEN:**

**ANDRITZ HYDRO CANADA INC.**

**APPLICANT**

**AND:**

**MUSKRAT FALLS CORPORATION**

**RESPONDENT**

<b>SUMMARY OF CURRENT DOCUMENT</b>	
<b>Court File Number:</b>	<b>2016 01G</b>
<b>Date of Filing of Document:</b>	<b>May 19, 2016</b>
<b>Name of Filing Party or Person:</b>	<b>Martin Scisizzi, Bevan Brooksbank and Hugh Meighen on behalf of the Applicant</b>
<b>Application to which Document relates:</b>	<b>Application for interim, interlocutory injunction under Rule 22.01 and Rule 29</b>
<b>Statement of Purpose in Filing:</b>	<b>Notice to Respondent</b>

**NOTICE TO RESPONDENT**

You are hereby notified that the foregoing application will be heard by the Judge presiding in Chambers at St. John's, Newfoundland and Labrador, on the 7<sup>th</sup> day of ~~May~~ <sup>June</sup>, 2016 at the hour of 10:00 o'clock in the forenoon or so soon thereafter as the application can be heard.

**To:** Muskrat Falls Corporation  
350 Torbay Road Plaza, Suite No. 2  
St. John's NL, Canada  
A1A 4E1  
Attention: Scott O'Brien, Project Manager

**And to:** The Registrar  
Supreme Court of Newfoundland and Labrador

Trial Division (General)  
313 Duckworth Street  
St. John's, NL A1C 5M3