APPELLANT'S ARGUMENTS

PART I - THE FACTS

1. The facts relevant to this present appeal stem largely from undisputed evidence. However, the Appellant, Ressources Strateco inc. ("**Strateco**"), questions the fact that the trial judge ignored certain facts stemming from clear and unequivoquial evidence. We will summarize only a few to paint a general portrait.

2. Strateco is a junior mining exploration company that had been previously listed on the Toronto Stock Exchange that has invested in Québec more than 144 million dollars in the Matoush Project.[1]

3. The Matoush Project's ultimate goal was uranium mining production.

4. The Matoush Project was located 275 km northeast of Chibougamau and 210 km northeast of the Cree community of Mistissini, on the James Bay Municipality territory.[2] It was located on Category III land, as defined by the James Bay and Northern Quebec Agreement ("**JBNQA**"), that is public lands where the Cree only have non-exclusive trapping, fishing and berry picking rights.[3]

5. After having explored the surface for more than 2 years, in March 2008, Strateco initiated the process to obtain an advanced exploration certificate to build an underground ramp on the property where the Matoush Project was located. The four main objectives of going underground were to confirm the mining method and its cost, to determine the quantity and quality of the water, the ventilation required

[1] On Strateco investment, see exhibit-45, A.C., vol. 6, p. 1565 to 1567 and exhibit P-46, A.C., vol. 6, p. 1568 and following. Also see judgment, para 381, A.C., vol. 1, p. 81. To arrive at the sum of $182,684,575 in compensatory damages, Strateco accepted that a sum of $4,788,910 in capital be subtracted, plus a sum of $2, 514,178 in interests.
[2] Exhibit P-3, A.C., vol. 3, p. 473; also see exhibit P-2, A.C., vol. 3, p. 472;
[3] James Bay and Northern Quebec Agreement.

due to the presence of radon, and to confirm mine reserves.[4] The Matoush Project had tremendous potential.[5]

6. Strateco needed to obtain authorization from the Canadian Nuclear Safety Commission ("**CNSC"**), the federal administrator under the JBNQA, the federal Minister of Environment, and the provincial Minister of Sustainable Development, Environment and Parks (the "**Minister**")[6], within the Environmental and Social Impact Assessment. Strateco abided by this thorough process[7].

7. From 2005 to October 2012, the Government of Quebec (the "**Government**") actively supported uranium development on the territory governed by the JBNQA:

10 a) The Ministry of Energy and Natural Resources published many articles and brochures to promote uranium development in Quebec[8];

b) When the map showing the prolongation of route 167 was issued in July 2009 by the government authorities and their consultants, Strateco's Matoush Camp was the only project contained therein[9]. Mr. Jacques Dupont acknowledged that the prolongation of route 167 was, among other things, for Strateco's benefit[10];

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[4] Exhibit P-10, A.C., vol. 3, p. 622 to 624; testimony of Guy Hébert, A.C., vol. 34, p. 11647-11648; Judgment, A.C., vol. 1, p. 21;

[5] On December 3, 2012, indicated mineral resources of the Matoush Project were estimated at 12.3 million pounds (grade 0.95% $U_3O_{8)}$ and inferred mineral resources at 16,44 million pounds (grade 0.44% U_3O_8): Exhibit P-5, A.C., vol, 3, p. 475 and following, especially p. 476.

[6] It should be noted that the deputy minister of Environment is the person who usually renders the vast majority of decisions under his or her delegation of authority. See footnote 48 of this submission.

[7] See Environment and Social Impact study done by Strateco containing 1877 pages and prepared in collaboration with consultants, exhibit P-14, A.C., vol. 3, p. 705 and following (on CDROM); testimony of Guy Hébert, A.C., vol. 35, p. 11707 to 11709 and vol. 34, p. 11692-11693. Also see COFEX-South Report, exhibit P-19, A.C., vol. 4, p. 762 and following, and the COMEX Report, exhibit P-20, A.C., vol. 4, p. 989 and following;

[8] Testimony of Roch Gaudreau, A.C., vol. 37, p. 12362, 12363, 12365 and 12367; exhibit P-54, A.C., vol. 6, p. 1904 and following; exhibit P-55, A.C., vol. 6, p. 1908 and following; exhibit P-56, A.C., vol. 6, p. 1912, and following; exhibit P-57, A.C., vol. 6, p. 1915 and following; exhibit P-58, A.C., vol. 6, p. 1916 and following; exhibit P-59, A.C., vol. 7, p. 1920 and following; exhibit P-60, A.C., vol. 7, p. 1966 and following; exhibit P-27, A.C., vol. 5, p. 1227 and following ; see also exhibit P-26, A.C., vol. 5, p. 1224 and following; also see as examples: testimony of Guy Hébert, A.C., vol. 34, p. 11666-11667 and p. 11689 to 11691; Judgment, A.C., vol. 1, p. 42 (para 187) and p. 57 (para 248);

[9] Exhibit D-19, A.C., vol. 16, p. 4925;

[10] Testimony of Jacques Dupont, A.C., vol. 36, p. 12254-12255;

c) Strateco obtained authorization from the Government to build an airstrip and airport terminal, built in 2010, at the cost of more than eight million dollars;[11]

d) Strateco was one of the eleven Plan Nord mining projects.[12] The Plan Nord had been anounced in May 2011 with great pride;

e) During the Cap Nord tour, Guy Hébert, President of Strateco, presented the Matoush Project on three occasions alongside Premier Jean Charest.[13]

8. In February 2012, Strateco obtained the authorizations from the Federal
10 Administrator and Federal Minister of Environment.[14]

9. In October 2012, Strateco obtained the authorization from the CNSC[15]. To issue said authorization, the CNSC, composed of experts in different fields[16], spent more than 8,000 hours studying and analyzing Strateco's underground exploration program.[17] The provincial administrator still had not made its decision.

10. The said project presented no biophysical risk that would entail the refusal of the certificate of authorization.[18]

11. In August 2012, between the reception of both certificates, the Crees, gathered in General Assembly, enacted a permanent and immediate moratorium on uranium.[19]

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[11] Exhibit P-7, A.C., vol. 3, p. 501 to 505; testimony of Guy Hébert, A.C., vol. 35, p. 11702 to 11706; exhibit I-144, A.C., vol. 30, p. 10088 and 10082;
[12] Exhibit P-22, A.C., vol. 4, p. 1036 and following, especially p. 1101 to 1104; testimony of M. Guy Hébert, A.C., vol. 35, p. 11757 to 11759; testimony of Diane Jean, A.C., vol. 36, p. 12181; Judgment, para 475, A.C., vol. 1, p. 102; see also exhibit P-23, A.C., vol. 5, p. 1195;
[13] Exhibit P-24, A.C., vol. 5, p. 1197 and following; Exhibit P-25, A.C., vol. 5, p. 1204 and following; testimony of Guy Hébert, A.C., vol. 35, p. 11795 to 11799;
[14] Exhibit P-29, A.C., vol. 5, p. 1281 to 1291;
[15] Exhibit P-31, A.C., vol. 5, p. 1372 and following; see also exhibit P-30, A.C., vol. 5, p. 1292 and following;
[16] Exhibit P-91, A.C., vol. 8, p. 2342-2343, testimony of Patsy Thompson, A.C., vol. 36, p. 12079-12080 and p. 12089;
[17] Testimony of Patsy Thompson, A.C., vol. 36, p. 12090. In fact, Mrs. Thompson testified that the CNSC experts had studied the impacts of the Matoush Project on the aboriginal way of life, A.C., vol. 36, p. 12091 to 12093;
[18] See also: exhibit P-47, A.C., vol. 6, p. 1847; COMEX Report, exhibit P-20, A.C., vol. 4, p. 1014; testimony of Jacques Dupont, A.C., vol. 36, p. 12256-12557;
[19] Exhibit I-39, A.C., vol. 27, p. 8765-8766; Judgment, A.C., vol. 1, p. 55-56;

They proclaimed their right to self-determination and sovereignty on the James Bay territory.[20] In fact, they claimed having a veto right on all projects taking place on their territory, including Category III public lands.[21]

12. This self-proclamation of a permanent and immediate moratorium by the Crees was done in spite of the fact that:

a) In December 2010, the Grand Council of the Crees ("**GCC**"), which represents the Quebec Crees, adopted a mining policy and guidelines under which they claimed that Cree consent, through the signing of a Pre-Development Agreement ("**PDA**") or Impact Benefit Agreement ("**IBA"**), was a prerequisite for all mining development projects on the James Bay territory.[22]

b) In January 2011, the Cree Nation of Mistissini ("**CNM**") adopted a resolution to ask the Government to declare a moratorium on uranium exploration on the territory of the Cree Nation of Mistissini.[23] In March 2011, the GCC went ahead and supported the CNM.[24]

c) In February 2011, in a document reiterating the Cree vision of the Plan Nord as well as in later discussions with the Government of Quebec, the GCC required, in order to support the Plan Nord, that the signing of PDA's and IBA's constitute legislative requirements.[25] The Government refused this condition. Grand Chief Matthew Coon Come indicated in his testimony:

> Q Right. And you did not succeed on making it a legislative requirement for an Impact and Benefit Agreement?

[20] Exhibit P-86, A.C., vol. 7, p. 2288 and following;
[21] Exhibit P-86, A.C., vol. 7, p. 2288 and following; exhibit I-39, A.C., vol. 27, p. 8765-8766; testimony of Matthew Coon Come, A.C., vol. 38, p. 12769 and p. 12805;
[22] Exhibits I-36, A.C., vol. 27, p. 8722 and following; exhibit I-37, A.C., vol. 27, p. 8732 and following, especially p. 8744 to 8748; testimony of Richard Shecapio, A.C., vol. 37, p. 12607; Judgment, A.C., vol. 1, p. 25 -26;
[23] Exhibit D-6, A.C., vol. 12, p. 3878-3880;
[24] Exhibit D-7, A.C., vol. 12, p. 3881-3882;
[25] Exhibit I-156, A.C., vol. 31, p. 10376 and following, especially p. 10450 and 10451; testimony of Matthew Coon Come, A.C., vol. 38, p. 12797-12798;

R Believe me, Mister Justice, we tried […]".[26]

d) The Crees of Quebec still supported the Plan Nord.[27]

e) From the summer of 2011 to the summer of 2012, this claim from the Crees of Quebec as to their veto right was not put forward.

13. In the fall of 2012, GCC representatives met with the Minister of Environment at the time, Daniel Breton, and Premier Pauline Marois, to put pressure on declaring a permanent moratorium on uranium exploration and mining.[28]

14. Moreover, in December 2012, Jean St-Gelais, Secretary General of the Government, accompanied by several deputy ministers and assistant deputy ministers, met Cree officials and the President of Strateco separately, following Premier Marois' request.[29] On one of these meetings, Abel Bosum, a GCC representative, indicated that "never in 100 years" would there be a uranium project on the traditional territory of Eeyou Istchee[30] and that even if a BAPE would conclude in favor of uranium development, the Crees would refuse any uranium project[31].

15. On that subject, assistant deputy minister Jacques Dupont indicated, when he was examined out of court:

> A. The minister was involved at that time, discussions took place – even the Secretary General – it was not an easy decision for the Government; it became very political, it was no longer an administrative issue, it was a political decision, and of course, political instances, whether the Minister or the Executive Council, didn't want to impede the Plan Nord or make an enemy of the Crees, they want…they wanted to find a solution that would suit everyone.

[26] Testimony of Matthew Coon Come, A.C., vol. 38, p. 12799 ; see also page 12810;
[27] Testimony of Matthew Coon Come, A.C., vol. 38, p. 12798-12799; testimony of Jacques Dupont, A.C., vol. 36, p. 12254; Plan Nord, Exhibit P-22, A.C., vol. 4, p. 1036 and following;
[28] Judgment, paragraphs 260, 261 and 277, A.C., vol. 1; p. 59 and 61; testimony of Matthew Coon Come, A.C., vol. 38, p. 12772;
[29] Testimony of Jacques Dupont, A.C., vol. 36, p. 12241-12242; see also exhibit P-47, A.C., vol. 6, p. 1844 and following;
[30] Testimony of Jacques Dupont, A.C., vol. 36, p. 12256; Examination on discovery of Jacques Dupont, September 29, 2015, A.C., vol. 34, p. 11513;
[31] Exhibit P-87, A.C., vol. 8, p. 2308 and following, especially p. 2310; see also judgment, paragraph 282, A.C., vol. 1, p. 62; Exhibit P-47, A.C., vol. 6, p. 1845;

> In this case, it wasn't easy to find. So at the time, that's the dilemma they were facing.[32] [TRANSLATION]
>
> (Our emphasis.)

16. Strateco was caught in a political debate that went well beyond its application for a certificate of authorization for underground exploration.

17. The provincial deputy minister of Environment, Diane Jean, never rendered a decision in this case[33], despite recommendations issued with conditions by the COMEX in July 2011.[34]

18. In January 2013, Strateco filed a Petition for Writ of Mandamus and Declaratory
10 Judgment to force a decision on its application for a certificate of authorization for an underground exploration ramp.[35] Almost five years had passed since that application.

19. In the absence of such a decision, on March 28, 2013, the Minister announced that no certificate of authorization for advanced uranium exploration or mining production would be issued as long as the BAPE would not have issued its investigative report on uranium production.[36] Strateco was especially targeted by this announcement. It was in fact the only project at the advanced exploration stage and the only one to be affected by its immediate impact.[37]

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[32] Examination on discovery of Jacques Dupont, September 29, 2015, A.C., vol. 34, p. 11511; Judgment, para 480, A.C., vol.1, p. 102 and 103;
[33] Testimony of Diane Jean, A.C., vol. 36, p. 12182. Mrs. Jean stepped down as deputy minister in February 2013; her successor, Clément D'Astous, is not the one who rendered a decision on Strateco's application.
[34] Exhibit P-20, A.C., vol. 4, p. 989 and following, especially p. 1013 to 1019;
[35] Exhibit P-33, A.C., vol. 5, p. 1389 and following;
[36] Exhibit P-34, A.C., vol. 5, p. 1398;
[37] Exhibit P-89, A.C., vol. 8, p. 2313 to 2325, especially p. 2317; Exhibit P-37, A.C., vol. 5, p. 1402 to 1404; Exhibit I-133, A.C., vol. 30, p. 9816 to 9819; testimony of Guy Hébert, A.C., vol. 35, p. 11823 to 11828; testimony of Richard Shecapio, A.C., vol. 37, p. 12632; testimony of Matthew Coon Come, A.C., vol. 38, p. 12808;

20. Strateco had to proceed to the immediate depreciation of the value of its assets in the amount of $87,241,070, a direct consequence of the Minister's announcement.[38]

21. In June 2013, a hearing for a safeguard order was heard in the Mandamus case.[39] For fear of being ordered to issue the certificate of authorization, the Minister issued a prior notice of rejection based on the lack of social acceptability by the Crees, a concept which is neither mentioned nor defined in any laws[40], and asked Strateco for its observations.[41] Strateco issued its observations on September 20, 2013[42]. The final notice of rejection regarding said certificate was issued on
10 November 7, 2013, on the same basis.[43]

22. On November 18, 2014, the Minister of Energy and Natural Resources, responsible for the Plan Nord, Pierre Arcand, announced a strategic study on the notion of social acceptability, in order to define the notion.[44]

[38] Exhibit P-36, A.C., vol. 5, p. 1400 and 1401; testimony of Guy Hébert, A.C., vol. 35, p. 11828-11829; Judgment, paragraph 299, A.C., vol. 1, p. 64;
[39] Exhibit D-15, A.C., vol. 16, p. 4868;
[40] Testimony of Diane Jean, A.C., vol. 36, p. 12184; *Environment Quality Act*, CQLR c. Q-2 ("EQA"), and *Mining Act*, CQLR c. M-13.1. At all relevant times to Strateco's application, social acceptability was a vague concept having no known definition. The Government actors had different definitions of such concept: examination on discovery of Jacques Dupont, September 29, 2015, A.C., vol. 34, p. 11501 and p. 11523-11524; testimony of Diane Jean, A.C., vol. 36, p. 12156 and p. 12208 and 12209; see also exhibit P-101, A.C., vol. 8, p. 2533: the Ministry had no instruction or guideline in 2009 regarding the notion of social acceptability; exhibit P-43, A.C., vol. 6, p. 1538 and following, especially pages 1544 to 1546; exhibit D-27, A.C., vol. 19, p. 5859; exhibit P-50, A.C., vol. 6, p. 1860 and following; exhibit P-112, A.C., vol. 8, p. 2646 and following, especially p. 2647 and 2651;
[41] Testimony of Jacques Dupont, A.C., vol. 36, p. 12250-12251; Judgment, para 303, A.C., vol. 1, p. 64; Exhibit P-38, A.C., vol. 5, p. 1405 and following;
[42] Exhibit P-42, A.C., vol. 5, p. 1418 and following; see also exhibit P-40, A.C., vol. 5, p. 1411 and following and exhibit P-41, A.C, vol. 5, p. 1414 and following; Strateco is aided by Johanne Gélinas from RCGT: testimony of Guy Hébert, A.C., vol. 35, p. 11831 to 11833; Judgment, A.C., vol. 1, p. 66. Mrs. Gélinas is the expert hired by the Government a year later to assist with the strategic study on social acceptability: see also exhibit-P-50, A.C., vol. 6, p. 1861;
[43] Exhibit P-44, A.C., vol. 6, p. 1557 and following;
[44] Exhibit P-50, A.C., vol. 6, p. 1860 and following; exhibit D-27, A.C., vol. 19, p. 5859; Judgment, para 324, A.C., vol. 1, p. 68;

PART II - QUESTIONS IN DISPUTE

QUESTION 1

Did the judge err in law by ignoring the fact that the James Bay territory environmental regime is more restrictive of the Minister's discretionary power than the one in Part 1 of the EQA?

QUESTION 2

Did the judge err in law by actually granting a veto right to the Crees while stating that they do not have such legal right?

QUESTION 3

Did the judge err in law by concluding that disguised expropriation required the dispossession of mining rights and that in all cases a fault was required to obtain financial compensation on behalf of the Government of Quebec?

QUESTION 4

Did the judge err in law by refusing to consider the breaches of the Government of Quebec and the Minister with regards to their duty of consistency

PART III - ARGUMENTS

QUESTION 1

The judge erred in law by ignoring the fact that the James Bay territory environmental regime is more restrictive of the Minister's discretionary power than the one in Part 1 of the EQA

QUESTION 2

The judge erred in law by actually granting a veto right to the Crees while stating that they do not have such legal right

23. The appellant, Strateco, chose to consider these two errors by the trial judge in one section because they are closely tied in the judgment.

24. In paragraphs 490 to 496 of the judgment, the judge writes:

> « [490] The Minister is elected and is responsible for making decisions. In order to do so, and based on applicable criteria, he may choose to also consider public interest, which he has probably done in this case.
>
> [491] In this case, the Minister was faced with two irreconcilable positions and had to decide.
>
> [492] It is incorrect to contend that he granted the Cree nation a veto right. This veto right does not exist, as the Supreme Court reiterated in the *Moses*[158] case and as recognized by everyone, including the Crees.
>
> [493] He took into account, based on section 152 of the EQA, the different factors and relevant principles, such as social acceptability.
>
> [494] The weight he wanted to attribute to each criterion is his. It is a political decision courts have no control over as long as it is legally sound.
>
> [495] The Minister did not abdicate power. He could have refused the application for the certificate.
>
> [496] Even if the decision did contain a significant political aspect to it, nonetheless, it is the responsibility of the elected officials to decide. [TRANSLATION]"[45]
>
> (Our emphasis.)

[45] Judgment, A.C., vol. 1, p. 105;

25. The judge makes two overriding errors in this conclusion: the first one being to consider that as an elected official, the Minister can, upon the application for a certificate of authorization under Chapter 2 of the *Environment Quality Act* ("**EQA**")[46], render a political decision when faced with two irreconcilable positions. He commits a second error when he writes that the Crees' lack of social acceptability was reason enough to reject Strateco's certificate of authorization.

26. In addition to these two errors, the judge also discards undisputed facts that show that Strateco was sacrificed for purely political reasons, beyond the scope of the JBNQA and EQA, thus for political expediency.[47]

A. <u>The Minister does not act as an elected official under Chapter 2 of the EQA and his discretionary power is more limited than that of the Government under Chapter 1</u>

27. With deference to the judge, when the Minister exercises his discretionary power under Chapter 2 of the EQA, he does not act as an elected official. The administrator under the JBNQA - at the provincial level the Minister or his deputy minister - does not have the right to decide based on political considerations beyond the scope of Chapter 2 of the EQA because the Minister would be accountable to the electorate as said by the judge.

28. In fact, the evidence is clear and undisputed, as a general rule, it is the deputy minister of Environment who renders decisions regarding applications for certificates of authorization under Chapter 2 of the EQA.[48] The deputy minister of Environment is not elected. The fact that the Minister renders a decision following Strateco's application does not change the applicable principles. The Minister was acting as an administrator who had to operate within a legislative framework.

[46] CQLR c. Q-2;
[47] See paragraphs 11 to 16, 19, 62 to 68, 95 and 96 of this submission.
[48] Testimony of Diane Jean, A.C., vol. 36, p. 12152-12153, p. 12170 and p. 12183; Judgment, A.C., vol. 1, p. 114 (para 561);

29. The trial judge erred by concluding that the Minister, as an elected official, could take into account, in deciding on the certificate of authorization, the "significant political aspect".

30. In the case at hand, the "political aspect" refers to the fact that the Crees declared a permanent uranium moratorium and that part of the Cree population opposed the Matoush Project. On one hand, Strateco wants to go ahead, and on the other, the Crees are opposed and the Government is afraid they will impede the Plan Nord.[49] On the issue of the case's high political profile, we refer you to paragraphs 11 to 16 and 63 of this submission.

10 31. To conclude as he did, the judge failed to take into account the specificity of Chapter 2 of the EQA, which only applies to the JBNQA territory.

B. Distinction between Chapter 1 and 2 of the EQA

32. Chapter 2 of the EQA represents the implementation in Quebec of Chapter 22 of the JBNQA. The JBNQA is a unique multi-party agreement through which the parties, among other things, settled land claims of the Cree of Québec and established a land management system[50], including an environmental and social protection regime, that is more detailed than the regime established in Chapter 1 of the EQA.

33. Thus, the Crees of Quebec and governments, including the Government of
20 Quebec, agreed that the decision-maker's discretionary power in connection with environmental assessments on the territory be exercised within the limits of these guiding principles contained in section 22.2.4 of the JBNQA and reiterated in section 152 of the EQA.

[49] Examination on discovery of Jacques Dupont, A.C., vol. 34, p. 11511; Exhibit P-47, A.C., vol. 6, p. 1847 to 1849; Judgment, A.C., vol. 1, p. 103-104;
[50] Judgment, paragraphs 40, 41 and 56, A.C., vol. 1, p. 7 and 12;

34. Under Chapter 2 of the EQA, the COMEX only has the power to issue recommendations and the minister or deputy minister makes a decision based on the principles therein.[51]

35. Furthermore, for the territory not covered by the JBNQA, the process is different. Chapter 1 of the EQA stipulates that if a project is submitted to an environmental assessment, then the BAPE is required to hold public consultations. The BAPE then reports to the Minister who then makes recommendations to Cabinet members. Then the Government decides if a project goes ahead or not[52], hence the notion "elected officials" who are accountable to the electorate.

36. In addition, in Chapter 1 of the EQA, the principles and elements examined by the Government are not identified in the law. The Government may take into account general government policies.[53]

37. The judge failed to consider the limits of the Minister's discretionary power under Chapter 2 of the EQA. The JBNQA and Chapter 2 of the EQA are comprehensive and unique.

38. The judge erred in quoting excerpts of *Bellefleur* c. *Québec (Procureur général)*[54], especially paragraph 439 of the judgment[55], out of context, without making important distinctions. Instead of recognizing the uniqueness of Chapter 2, he makes a direct connection between both regimes, which, with all due respect, cannot be done.

39. Moreover, he fails to mention the principle acknowledged by this decision in that the Minister's discretionary power under the EQA is already limited by the law itself and by the instructions given to the proponent.[56]

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[51] EQA, section 152, 160 to 164; testimony of Diane Jean, A.C., vol. 36, p. 12152.
[52] EQA, section 31.1 to 31.5; testimony of Louis Simard, A.C., vol. 37, p. 12460-12461.
[53] EQA, chap. 1; *Bellefleur* v. *Québec (Attorney General)*, 1993 CanLII 4067 (QCCA); *Arbour* c. *Procureure générale du Québec*, 2017 QCCS 1812, para 149 and 150.
[54] *Bellefleur* c. *Québec (Procureur général)*, supra, note 53.
[55] Judgment, para 439, A.C., vol. 1, p. 93 and 94.
[56] *Bellefleur* c. *Québec (Procureur général)*, supra, note 53, pages 67 and 68;

40. The judge failed to consider these limits to the Minister's discretionary power and his power to intervene, which was appropriate in the circumstances.[57]

41. The Minister was acting as an administrator of the JBNQA and could not grant the Crees more weight than that provided by the JBNQA and the EQA.

42. Under Chapter 2 of the EQA, public interest as a unique factor can only be weighed in a certain way. The political power to overturn is only possible for the authorization of a project that would not have been otherwise authorized by the Minister[58]. The JBNQA and Chapter 2 of the EQA do not allow the rejection of a project on the basis of public interest. Section 167 of the EQA (section 22.7.2 of the JBNQA) reads as follows:

> "**167.** Subject to the provisions applicable to Category I lands under the Act respecting the land regime in the James Bay and New Québec territories (chapter R-13.1) and notwithstanding section 154, the Government may, at any time, when it deems it appropriate in the public interest, authorize, on its conditions, the carrying out or the operation of a project that has not been authorized by the Minister, or modify certain conditions imposed by the latter.
>
> In such cases, the Minister may, after consulting the Review Committee, recommend to the Government that it add to its decision certain conditions designed to ensure the protection of the environment and social milieu. The Government may impose such conditions or any other condition it deems useful."

43. It is clear from the JBNQA and the EQA that the Crees wanted to limit the decision-makers' rights to make political decisions, and that is what the parties have actually agreed on.

44. Also, when the judge concludes that the Minister could have refused the certificate of authorization asked by Strateco solely on the basis of lack of social acceptability of the Crees, he makes an overriding error.

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[57] *Montambault et al.* c. *Hôpital Maisonneuve-Rosemont*, 2001 CanLII 11069 (QCCA), (2001) RJQ 897, see para 80-81.

[58] See also *Quebec (Attorney General)* v. *Moses*, 2010 SCC 17, [2010] 1 SCR 557, p. 577, para 19; also judgment, para 499, A.C., vol. 1, p. 106 and 107;

C. The Crees benefit from privileged participation in the process provided by Chapter 2 of the EQA but do not benefit from any right over the result of such a demand.

45. To begin, the judge concludes that social acceptability is a result. He writes in paragraph 441 of the judgment:

> "[441] The Court accepts Dr. Louis Simard's expertise. Social acceptability is measured by its result. Only taking into account the process is non sense given the minister would be invited to approve a project clearly opposed to by the local community."[59] [TRANSLATION]
>
> (Our emphasis.)

46. Later the judge writes at paragraph 448 of the judgment:

> "[448] The spirit and the text of the JBNQA and the Paix des Braves highlight the importance of considering local communities before accepting any project that may have an environmental and social impact on the targeted territory. Not only can a decision-maker take into account social acceptability but he must do so."[60] [TRANSLATION]
>
> (Our emphasis.)

47. Notwithstanding these statements, the judge states that the Crees have no veto right:

> "[468] If Cree communities have claimed for years a veto right on projects developed on their territory, this right has never actually been granted to them by the legislator. [TRANSLATION]
>
> [469] The Cree community has no veto right. It was up to the minister to decide all factors to be taken into account, such as the Crees' lack of social acceptability of the project. [TRANSLATION]
>
> […]
>
> [492] It is incorrect to contend that he granted the Cree nation a veto right. This veto right does not exist, as the Supreme Court reiterated in the *Moses*[158] case and as recognized by everyone, including the Crees.
>
> "[61] [TRANSLATION]

[59] Judgment, A.C., vol. 1, p. 94;
[60] Judgment, A.C., vol. 1, p. 98;
[61] Judgment, A.C., vol. 1, p. 101 and 105;

48. The judge reminds us that the Crees have no veto right, and then concludes that the Minister could reject the certificate of authorization on the basis of the "the Crees' lack of social acceptability". With deference, these two premises are irreconcilable, whether it be logically or legally.

i. Two irreconcilable premises based on logic

49. The judge is right when he says that the Crees don't have a veto right on projects on the JBNQA territory. Evidence to that effect is clear and undisputed.[62]

50. But when it comes to pure logic, if social acceptability is a result, it is the acceptance of the project by the Crees, or in other words, their simple consent to it[63]. Because the Crees have no veto right and thus no right over the outcome of an application for a certificate of authorization, rejecting such Certificate on the basis of "the Crees' lack of social acceptability" is indirectly doing what cannot be done directly because it would be granting the Crees the right to veto a project.

51. It is in fact the Court of Appeal of British Columbia's conclusion in the recent case of *Prophet River First Nation* v. *British Columbia (Environment)*, in which the judge writes:

> [65] […] The duty to consult and accommodate does not afford First Nations a « veto » over the proposed activity: *Mikisew* at para. 66. Here, the appellants have not been open to any accommodation short of selecting an alternative to the projects; such position amounts to seeking a "veto". They rightly contend that a meaningful process of consultation requires working collaboratively to find a compromise that balances the conflicting interests at issue, in a manner that minimally impairs the exercise of treaty rights. But that becomes unworkable when, as here, the only compromise acceptable to them is to abandon the entire project.[64]
>
> (Our emphasis.)

52. The judge had in fact asked the following question to expert Louis Simard at trial:

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[62] Testimony of Matthew Coon Come, A.C., vol. 38, p. 12791-12792; testimony of Diane Jean, A.C., vol. 36, p. 12186; testimony of Jacques Dupont, A.C., vol. 36, p. 12253;
[63] In fact, it is in keeping with the Crees' definition: testimony of Richard Shecapio, A.C., vol. 37, p. 12631; exhibit P-86, A.C., vol. 7, p. 2303 and 2305.
[64] *Prophet River First Nation* v. *British Columbia (Environment)*, 2017 BCSC 58, para 65.

> Q [215] […] Secondly, you say we don't give... it's not one of the stakeholder's veto right. How can we reconcile that fact of aiming at the result and not the process and to have... and to... and not grant a veto right to one, to one or another, to one or another of the stakeholders?
>
> R Hum, hum.
>
> Q [216] Do you understand the question?
>
> R I think so.
>
> Q [217] Very well.
>
> R The decision always belongs to the elected officials and what is important and relevant and useful for the notion of social acceptability, is to see if we have it or not. Officials can decide to go ahead with a project even without social acceptability. They ultimately decide, but they can decide that in case X, Y or Z, the social dimension, the project's social acceptability prevails, and that on that basis, on the basis of their responsibility and accountability, will say that in such a case they don't want to authorise a project because social acceptability is fundamental. And it is in line with that that we have, in... in... in... in the context of sustainable development, to take into account three (3) dimensions."[65] [TRANSLATION]
>
> (Our emphasis.)

53. With deference, a Minister who considers as sole criterion or decisive criterion the social acceptability of a specific group seen as a result, necessarily gives a veto right to that group on a project.[66]

ii. Two irreconcilable premises based on law

54. The JBNQA and Chapter 2 of the EQA are clear in that the Crees benefit from a privileged participation in the consultation and recommendation process regarding social and environmental impact assessments of Category III land. They elect members of the COMEV and COMEX who do not make up the majority of both committees. In addition, they receive money within government programs to hire their own experts and proceed with their own information session.[67]

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[65] Testimony of Louis Simard, January 27, 2017, A.C., vol. 37, p. 12486;
[66] Evidence revealed that the Jamésiens were generally in favor of the Matoush Project: see also exhibit P-47, A.C., vol. 6, p. 1845-1846; Exhibit P-41, A.C., vol. 5, p. 1416; Exhibit P-102, A.C., vol. 8, p. 2539 and following, especially p. 2564; Exhibit P-103, A.C., vol. 8, p. 2584; Judgment, paragraph 314, A.C., vol. 1, p. 65-66;
[67] Exhibit I-92, A.C., vol. 29, p. 9560 and following; exhibit I-103, A.C., vol. 29, p. 9581 and following; exhibit I-104, A.C., vol. 29, p. 9607-9608;

55. Nowhere in the JBNQA or in Chapter 2 of the EQA is it provided that the acceptance or rejection of a project by the Cree community can be a decisive criterion. And if the parties to the JBNQA would have wanted it as such, they would have provided for it, either at the beginning or at the time of many of the agreement's amendments[68], which is not the case. The JBNQA is a highly negotiated agreement.

56. The *Moses*[69] decision from the Supreme Court of Canada has in fact studied the question of the extent of the right of the Crees in the context of assessing the social and environmental impacts:

> [17] It was of great importance to have Cree and Inuit participation in the environmental impact assessment of projects within their respective territories, although their formal participation in the development of Category III lands (as here) was to be only as members of consultative and recommending bodies. In a project involving Category III lands, these Treaty bodies include the James Bay Advisory Committee on the Environment, which is described in the Treaty as "the preferential and official forum for responsible governments in the Territory concerning their involvement in the formulation of laws and regulations relating to the environmental and social protection regime" (s. 22.3.24); and the Evaluating Committee, which recommends "the extent of impact assessment and review" of a proposed development (s. 22.5.14) as well as the Environmental and Social Impact Review *Committee* for projects "involving" provincial jurisdiction (s. 22.6.1) and the Environmental and Social Impact Review *Panel* for projects "involving" federal jurisdiction (s. 22.6.4). In none of these committees or panels do the Cree nominees have a majority (s. 22.6.2 and s. 22.6.5). In any event, these bodies do not make development decisions. Their recommendations are not binding on the relevant decision makers."

57. The Crees' social acceptability as a result was not considered a condition for the JBNQA's federal administrator who granted, on February 2, 2012, the authorization requested by Strateco[70]. This decision from the federal administrator, as well as

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[68] The JBNQA was amended 24 times: see judgment, paragraph 55, A.C., vol. 1, p. 12. The Crees have relentlessly asked that their consent be required for projects on Category III land in the James Bay Territory and the Government has always refused: testimony of Matthew Coon Come, A.C., vol. 38, p. 12791-12792.
[69] *Quebec (Attorney General)* v. *Moses*, 2010 SCC 17, [2010] 1 SCR 557;
[70] Exhibit P-29, A.C., vol. 5, p. 1281 and following; see also Exhibit I-13, A.C., vol. 21, p. 6908 and following;

the decision from the federal Minister of Environment Peter Kent[71], was not contested by anyone, including the Crees.[72]

58. In concluding that the Minister can consider the Cree's refusal of a project as a decisive factor in the application for a certificate of authorization, the judge grants the Crees rights they do not have under the EQA and the JBNQA.

59. In reading Exhibit P-47, we understand that the Government knew very well that it meant granting the Crees a veto right they did not have. Mr. Jacques Dupont writes: "the project's rejection could reinforce the Grand Council of the Crees's power by giving it a *de facto* right on northern projects on the Eeyou-Ischtee territory [TRANSLATION]"[73].

60. In rejecting Strateco's certificate of authorization on the basis of the Crees' lack of social acceptability, the Minister does not assess the balance between the right of businesses to develop resources on the territory and environmental and social protection. He surrenders his discretionary power to the Crees, which is illegal and a fault, and triggers responsibilities.

61. It is even clearer when taking into account the undisputed proof tendered at trial, which demonstrates that the decision was made for reasons of political expediency.[74]

D. Strateco was sacrificed for political expediency

62. As of the fall of 2012, the Strateco case is no longer viewed based on Chapter 2 of the EQA. The Minister and the Government analyse the issue and take position based on implications that go beyond the scope of the provisions.

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[71] Exhibit P-29, A.C., vol. 5, p. 1281 and following. In fact, it is noteworthy that COFEX-South deals with the question of social acceptability as a "mechanism of information, dialogue and communication" and not as a "result": COFEX-South report, exhibit P-19, A.C., vol. 4, p. 923 to 925;
[72] Testimony of Matthew Coon Come, A.C., vol. 38, p. 12806; testimony of Richard Shecapio, A.C., vol. 37, p. 12626;
[73] Exhibit P-47, A.C., vol. 6, p. 1849; Judgment, A.C., vol. 1, p. 104; see also the testimony of Jacques Dupont who received copy of P-47 and lack of comments from stakeholders, A.C., vol. 36, p. 12244 and p. 12263;
[74] See paragraphs 11 to 16, 19, 62 to 68, 95 and 96 of this submission;

63. The decision on the application for a certificate of authorization was clearly made beyond the scope of the EQA: this decision was purely political.[75]

64. Courts cannot prevent the Government from making political and illegal decisions, but they can and must, in such circumstances, order that the victims of such political choices to ignore the law be compensated.

65. Strateco submits that if the Government wants to grant the GCC or the CNM a veto right on the JBNQA territory on any mining project, the law must provide for it, which is not the case. Alternatively, it must compensate those who, in good faith, relied on the law, instructions and assurances of the Government.

66. The Government of Québec has always refused to grant the Crees the right to decide if a project on Category III lands (public lands) would go forward or not.[76] Not only is the decision to reject the certificate of authorization on the basis of the Crees' lack of social acceptability faulty because it does not respect the EQA and the JBNQA, it is also faulty because the Minister and Government have violated their duty of consistency as is included in the notion of good faith.[77]

67. In doing so, the Minister has "fundamentally unsettled the terms of the exercise of power", which was incumbent under *Finney* c. *Barreau du Québec*[78]*.* He rendered an arbitrary decision, which amounts to a decision made in bad faith.[79]

68. These errors committed by the judge are decisive in that they should overturn the judgment.

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[75] See also: testimony of Jacques Dupont, A.C., vol. 36, p. 12254; examination on discovery of Jacques Dupont, A.C., vol. 34, p. 11511; testimony of Richard Shecapio, A.C., vol. 37, p. 12611. M. Shecapio precised his answer in re-examination: testimony of Richard Shecapio, A.C., vol. 37, p. 12636-12637;
[76] Testimony of Matthew Coon Come, A.C., vol. 38, p. 12791-12792. See also footnote on page 26; Judgment, paragraphs 468, 469 and 492, A.C., vol. 1, p. 101 and p. 105;
[77] See paragraphs 91 to 94 of this submission on duty to be consistent;
[78] *Finney* v. *Barreau du Québec*, 2004 SCC 36, [2004] 2 SCR 17; see also *Hinse* v. *Canada (Attorney General)*, 2015 SCC 35, [2015] 2 SCR 621;
[79] Idem. Also see *Roncarelli* v. *Duplessis*, [1959] SCR 121, p. 140 and *Entreprises Sibeca Inc.* v. *Frelighsburg (Municipality)*, 2004 SCC 61, [2004] 3 SCR 304;

QUESTION 3

The judge erred in law by concluding that disguised expropriation required the dispossession of mining rights and that in all cases a fault was required to obtain financial compensation on behalf of the Government of Quebec?

A. The disguised expropriation of the values of the claims

69. Section 82 of the *Mining Act* CQLR c. M-13.1 provides that in the case of invalidation of the claims for more than six months, the claims are expropriated and compensation becomes automatic. This Section read as follows in March 2013:

> **"82.** The Minister may order the cessation of the work if necessary in his judgment to permit the use of the territory for public utility purposes.
>
> In such a case, the Minister shall, subject to certain conditions, suspend the term of the claim.
>
> After six months, if the Minister is of opinion that the cessation of the work must be maintained, he shall expropriate the claim.."[80]

70. At paragraph 543, the judge writes:

> "[543] Following the Minister's decision, Strateco was not dispossessed and remains owner of the claims as long as it pays for its related costs. But dispossession is necessary for it to be considered as disguised expropriation[170]." [TRANSLATION]

71. The judge makes an overriding error when he concludes that the dispossession of mining rights is required for there to be disguised expropriation.

72. In the case of *Manitoba Fisheries Ltd.* v. *The Queen*[81], the Supreme Court of Canada states that government monopoly on the sale of fish, depriving a business from its goodwill, in all practicality, renders physical assets useless because they

[80] The text has changed and the last paragraph, since December 2013, reads as follows: "After six months, if the Minister is of opinion that the cessation of the work must be maintained, he shall terminate the claim and pay compensation equal to the amounts spent for all the work performed, on the filing of the reports on that work": *Mining Act*, CQLR c. M-13.1, section 82; Judgment, para 535 and 536, A.C., vol. 1, p. 111;
[81] *Manitoba Fisheries Ltd.* v. *The Queen*, [1979] 1 SCR 101, 1978 CanLII 22 (SCC);

have no value, despite the fact that the company continues to exist and possess the same physical assets:

> « It will be seen that in my opinion the *Freshwater Fish Marketing Act* and the Corporation created thereunder had the effect of depriving the appellant of its goodwill as a going concern and consequently rendering its physical assets virtually useless and that the goodwill so taken away constitutes property of the appellant for the loss of which no compensation whatever has been paid. There is nothing in the Act providing for the taking of such property by the Government without compensation and as I find that there was such a taking, it follows, in my view, that it was unauthorized having regard to the recognized rule that "unless the words of the statute clearly so demand, a statute is not to be construed so as to take away the property of a subject without compensation" *per* Lord Atkinson in *Attorney-General v. De Keyser's Royal Hotel, supra*."[82]
>
> (Our emphasis.)

73. Similarly, declaring the moratorium (which is still in effect today) has deprived Strateco of all the value related to its claims, as well as of all the efforts invested in developing these claims. "Dispossession" as defined by the above decision is to remove the value of an asset still owned by the party but that has become practically useless.

74. The claims have lost their value because Strateco's exploration activities targeted uranium only and there is clear and undisputed evidence that uranium is the only economic mineral present on the Matoush property.[83]

75. This reading of the *Manitoba Fisheries* decision is the same as that of the Supreme Court of Canada in *R*. v. *Tener*[84] :

> "[…] This acquisition by the Crown constitutes a taking from which compensation must flow. Such a conclusion is consistent with this Court's judgment in *Manitoba Fisheries Ltd. v. The Queen*, [1979] 1 S.C.R. 101. In that case the province had established a Crown corporation with a commercial monopoly in the export of fish from Manitoba and other participating provinces. The establishment of the Crown corporation had the effect of putting Manitoba Fisheries out of business. This Court

[82] Idem, p. 118;
[83] Testimony of Guy Hébert, A.C., vol. 34, p. 11640-11641 and p. 11645-11646;
[84] *R*. v. *Tener*, [1985] 1 SCR 533, 1985 CanLII 76 (SCC);

held that the province's actions deprived Manitoba Fisheries of its goodwill as a going concern and that the goodwill so taken by the Crown entitled the company to compensation despite the fact that they retained their physical assets, as those assets had been rendered virtually useless. Similarly in this case, the respondents are left with the minerals […]"

(Our emphasis.)

76. In paragraphs 405 to 407, the judge captures the essence of the devastating effects of the moratorium at the end of March 2013.[85] Nevertheless, when he considers the issue of disguised expropriation in his judgment, yet linked to the moratorium, he discards the effects of the moratorium.

B. Expropriation: a "no fault" statutory regime

77. In paragraphs 551 and 552, the judge writes:

« [551] Strateco argues that it should receive compensation without any fault being attributed to the Minister.

[552] This argument does not stand."[86] [TRANSLATION]

78. The notion of disguised expropriation is to take a right for public purposes without having to demonstrate a fault on the part of the Government and/or Minister.

79. The judge writes in paragraph 553 of the judgment that the disguised expropriation argument would apply in a situation where the proponent would be refused a certificate of authorization.[87] In the instance where the case is limited to the rejection of a certificate of authorization, Strateco agrees. However, the case at hand is different for many reasons:

a) It is not the refusal to grant the certificate of authorization that makes it a disguised expropriation: it is the March 28, 2013 *de facto* moratorium;

[85] Paragraphs 405 to 407 of the judgment, A.C., vol. 1, p. 84;
[86] Judgment, A.C. vol. 1, p. 113;
[87] Paragraph 553 of the judgment, A.C., vol. 1, p. 113;

b) Alternatively, the uniqueness of this case, with the political considerations that go beyond the scope of the EQA and JBNQA to refuse such certificate, does amount to a disguised expropriation.

80. In his judgment, when the judge raises the arguments on expropriation, although he quotes section 82 of the *Mining Act,* he completely ignores its effects.

81. The March 28, 2013 moratorium had the effect of invalidating Strateco's claims.[88] The BAPE's work usually spans over a minimum of two years, as Jacques Dupont testified[89]. Issuing the mandate to the BAPE took one year alone[90]. The suspension of the claims would last more than 6 months, as soon as it was announced on March 28, 2013.

82. In addition, the decision to reject Strateco's application for a certificate of authorisation was also issued 6 months after March 28, 2013. [91]

83. When the judge writes in paragraph 558 of the judgment that Strateco can try to present a new request for advanced uranium exploration[92], he sets aside the clear and undisputed evidence that the moratorium is still in effect more than four years and a half after the March 28, 2013 announcement[93].

84. These errors on the issue of expropriation of the value of Strateco's claims are decisive to the point of overturning the judgment.

[88] On the notion of expropriation of minings rights, see *Québec (Procureur général)* c. *Mines Utah Ltée*, EYB 1984-142491 (QC CA);
[89] Testimony of Jacques Dupont, A.C., vol. 36, p. 12248;
[90] Exhibit I-25, A.C., vol. 21, p. 7030-7031; see also exhibit P-49, A.C., vol. 6, p. 1853 and following;
[91] Exhibit P-44, A.C., vol. 6, p. 1557 and following;
[92] Paragraph 558 of the judgment, A.C., vol. 1, p. 114;
[93] See also: testimony of Guy Hébert, A.C., vol. 35, p. 11961; testimony of Louis Simard, A.C., vol. 37, p. 12481; testimony of Matthew Coon Come, A.C., vol. 37, p. 12808;

QUESTION 4

The judge erred in law by refusing to consider the breaches of the Government of Quebec and the Minister with regards to their duty of consistency

85. In paragraph 520 of the judgment, the judge writes:

> "[520] If Strateco saw positive signs regarding its project, it never had the assurance the minister would issue its certificate of autorization."[94] [TRANSLATION]

86. The judge is right on this point. No one gave Strateco the assurance that it would get its certificate of authorization.

10 87. In paragraphs 546 and 547, the judge writes:

> "[546] The Minister's refusal thus constitutes the realization of a risk known from the beginning, with regards to exploring a specific mineral which would ultimately be a first in Quebec, on a territory covered by a treaty between the Government of Quebec and the Cree Nation.
>
> [547] Mr. Hébert along with Strateco executives and investors, knew the important risks and challenges associated with the project. They knew the chances were poor, like with any mine, that the project would lead to an active mine."[95] [TRANSLATION]

20 88. On this issue, the risks should be distinguished. Strateco knew there were risks. However, at the point where it was, the evidence is clear that the vast majority of projects become mines[96].

89. The risk that the Government may not respect its own laws was not part of the risks Strateco needed to consider. When the Minister rejected the certificate of authorization, he did so while failing to respect the EQA. This is detailed in the answers to questions 1 and 2 of this submission.

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[94] Judgment, A.C., vol. 1, p. 109;
[95] Judgment, A.C., vol. 1, p. 112-113;
[96] CNSC public hearings, exhibit D-11a), Mr. Jammal from CNSC staff, p. 326, A.C., vol. 13, p. 4219; exhibit P-76, p. 2, A.C., vol. 7, p. 2234; testimony of Richard Shecapio, A.C., vol. 37, p. 12563-12564; Exhibit D-43, A.C., vol. 21, p. 6765; testimony of Rock Gaudreau, A.C., vol. 37, p. 12380; Mr. Gaudreau has testified that a mining lease cannot be refused for lack of social acceptability: testimony of Roch Gaudreau, A.C., vol. 37, p. 12376 and 12380;

A. The Government's erroneous turnaround

90. In addition, the judge fails to analyse what constitutes erroneous turnaround in the eyes of Strateco.[97] The State had allowed uranium development because the extraction of the mineral was legal. But on March 28, 2013, in declaring the moratorium, and stating that no certificate of authorization for advanced exploration and uranium production would be issued, the Minister actually suddenly modified the factual and legal situation that existed the day prior. He thus breaches his duty of consistency, thereby violating his duty of good faith.

91. The Government and Minister are subject to the same good faith obligations that any person, under section 1376 of the *Civil Code of Québec*, and sections 6, 7 and 1457 of the *Civil Code of Québec*.[98]

92. One component of good faith is the duty to be consistent and to not create false expectations. This honourable Court has described this obligation in the context of a contract in the case of *Hydro-Québec* c. *Construction Kiewit Cie* in the following terms:

> « 92 In fact, Hydro-Québec could not cause a prejudice to its contractor by acting contrary to an expectation stemming from their contractual relationship, and on which Kiewit depended on. Set out under good faith in the execution of the contract, this unreasonable behaviour is recognized by civil law under different names – "violated legitimate trust", "duty to be consistent" or "prohibition to contradict". It has also been recognized in international documents that may inspire Quebec law. When a party creates "false expectations" for his or her co-contractor, it may not resort back to the letter of the contract without violating the implicit duty of loyalty provided by sections 6, 7 and 1375 of the C.c.Q. Professors Lluelles and Moore include this duty not to create false expectations among the rules regarding good faith execution of contracts: […] [TRANSLATION]»
>
> (Our emphasis)

[97] However, in paragraph 382 of the judgment, A.C., vol. 1, p. 81, the judge seems to have indicated that the turnaround is linked to the moratorium, without responding to this argument by Strateco;
[98] See also *Agence du Revenu du Québec* c. *Groupe Enico inc*., 2016 QCCA 76 and *Inter-Cité Construction ltée* c. *Québec (Procureure générale)*, 2015 QCCS 4365 (under appeal);

93. Good faith guides contractual and non-contractual relations under our *Civil Code of Québec*. The Minister and Government committed a fault when they suddenly declared a *de facto* moratorium, in violation of the law. Indeed, as advanced uranium exploration and production is still permitted under the law today.

94. In the case of *Centre Hospitalier Mont-Sinaï* v. *Québec*, the Supreme Court of Canada, in the case of mandamus proceedings, ordered that the Health and Social Services Minister of Quebec issue the licence requested by the applicant. Justice Binnie, who comes to the same conclusion as the majority of the Court, but for different reasons, wrote:

> *E. The minister's decision amounted to discretionary abuse of power.*
>
> […]
>
> 64 In my view the Minister's decision of October 3, 1991, was "patently unreasonable" in terms of the public interest as he and his predecessors had defined it over a period of seven years of consultation, encouragement and assurances to the respondents, and in his total lack of regard for the implications for the respondents of the Minister's broken promises.
>
> […]
>
> 67 In light of this history, the Minister ought not to be heard *now* (i.e., 10 years later) to advance a new vision of the public interest at odds with what was earlier said and done. […]

95. One day, and for decades, it was in the public interest to allow uranium development on the James Bay territory and the Government even encouraged it openly and actively. The next day, on March 28, 2013, public interest no longer allowed it.

96. And the only reason for this sudden and abrupt shift, illegal because contrary to laws and binding in advance all decisions on applications for certificates of authorization, comes from Cree political pressure.[99] Political risk was not one Strateco needed to consider.

[99] See, among others, paragraphs 11 to 16 of this submission;

97. As mentioned, Quebec is a society based on the rule of law. The purpose of such States is not to be at the mercy of the arbitrary.

98. Strateco submits that if the Government no longer wanted the uranium deposits in Quebec to be developed, it should have admitted it, compensated Strateco, and modified the law, which has not been done.

99. If the Government was preoccupied with public opinion with regards to uranium production on the Quebec territory, it should have held public consultations before fostering investments in the field (2005 to 2012[100]), not after Strateco spent 144 million dollars on the Matoush Porject.

10 B. Other violation of the duty of good faith

100. No section in instructions P-13 pertaining to the environmental and social impact assessment speaks of the necessity to obtain the Crees' social acceptability.[101] Although social acceptability as a goal is mentioned[102], it is quite different than a prerequisite[103] and also very different than asking for the social acceptability of a targeted group or sub-group like the Crees.

101. If the Crees' social acceptability was a decisive condition, or alternatively "could be" a decisive criteria, which Strateco denies, instructions P-13, which had to stipulate the conditions and criteria examined and considered, should have spoken about it[104], which is not the case. The Minister and the Government would have

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[100] See footnote number 8 of this submission;
[101] Exhibit P-13, A.C., vol. 3, p. 677 and following;
[102] Judgment, A.C., vol. 1, p. 19 and 20; Exhibit P-13, A.C., vol. 3, p. 677 and following, especially p. 678, 683 and 695;
[103] On this subject, it should be specified that social acceptability is part of the implications businesses must deal with. Strateco wanted to be a good corporate citizen: testimony of Guy Hébert, A.C., vol. 35, p. 11696-11697, p. 11904 to 11906 and p. 11959-11960. It is keeping in mind that Strateco wanted to foster the acceptance of the project by the population and Mr. Hébert's testimony, that one should read the exhibits referred to by the judge in paragraphs 450 to 454 of the judgment, A.C., vol. 1, p. 98 and 99. Also, during the public hearings, the mayor of Chibougamau Manon Cyr clarified that "beyond autorizations and licences", the community of Mistissini's support was needed: Exhibit D-4b), A.C., vol. 12, p. 3704, and judgment, A.C., vol. 1, p. 28-29. See also testimony of Roch Gaudreau, A.C., vol. 37, p. 12376;
[104] See among others: exhibit P-13, A.C., vol. 3, p. 677 and following; *Bellefleur* c. *Québec (Procureur général)*, 1993 CanLII 4067 (QCCA); *Arbour* c. *Procureure générale du Québec*, 2017 QCCS 1812;

thus violated their obligation of good faith by failing to respect their duty to inform[105].

C. Compensatory Damages

102. The Government, in keeping with its laws and duty of consistency, must compensate Strateco in this case for the loss of its investments.[106]

D. Punitive Damages

103. Strateco claims that the judge should have also granted it punitive damages in the amount of $10,000,000 because the Government's and Minister's wrongdoing was conscious. They were aware of the immediate consequences[107], which was
10 Strateco's downfall[108].

104. The evidence is clear that the Minister was perfectly aware that Strateco was facing financial difficulties[109] Mr. Jacques Dupont had written down, following the December 17, 2013 meeting with Mr. Jean St-Gelais:

> « *Disadvantages*
>
> - *An unfavourable decision would jeopardize Ressources Stratéco's survival* […] »[110]

[105] *Banque de Montréal* v. *Bail*, [1992] 2 SCR. 554, 1992 CanLII 71*; Camion Daimler Canada Ltée* c. *Camions Sterling de Lévis inc*., 2017 QCCA 798;
[106] Strateco has lost $182,684,575: see note 1. See also Exhibit P-95, A.C., vol. 8, p. 2445 and following and exhibit P-96, A.C., vol. 8, p. 2449 and following. If we deduct from Strateco's claim $38,509,380 in tax credits (see judgment, A.C., vol. 1, p. 78 (para 372), it totals $144,175,195 including interests. As of December 31, 2012, Strateco's assets were worth $95,468,786: exhibit P-46, A.C., vol. 6, p. 1760. From that amount, $75,718,754 were deferred exploration and evaluation costs. This sum amounted to $87,241,070 on March 31, 2013, the amount of the devaluation following the announcement of the moratorium;
[107] The leading authority on the issue of punitive damages is *Cinar Corp*. v. *Robinson*, 2013 SCC 73, [2013] 3 SCR 1168;
[108] Strateco had to file for protection under the *Companies' Creditors Arrangement Act*, SCR 1985, c. C-36; testimony of Guy Hébert, A.C., vol. 35, p. 11839-11840;
[109] Exhibit P-47, A.C., vol. 6, p. 1847-1848; Testimony of Guy Hébert, A.C., vol. 35, p. 11817 to 11818; Testimony of Diane Jean, A.C., vol. 36, p. 12190
[110] Exhibit P-47, A.C., vol. 6, p. 1848;

105. The Minister chose to declare a moratorium targeting Strateco.[111] He had been notified by his own employees not to target Strateco.[112] A moratorium necessarily involved a minimum delay of two years.[113]

106. The Minister and the Government violated Strateco's rights to peaceful enjoyment and free disposition of property enshrined in section 6 of the *Charter of Human Rights and Freedoms* (CQLR, c. C-12), intentionally and voluntarily. An order for punitive damages in the amount of $10,000,000 is appropriate[114]. The breaches complained of are of the highest level in government and ministerial decision-making, in a context marked by political expediency, by total inconsistency and by
10 failure to meet its good faith obligations and to respect the law .

[111] T Testimony of Guy Hébert, A.C., vol. 35, p. 11823 to 11828; Exhibit P-88, A.C., vol. 8, p. 2311; Exhibit P-89, A.C., vol. 8, p. 2313 to 2325, especially p. 2317; testimony of Richard Shecapio, A.C., vol. 37, p. 12632; testimony of Matthew Coon Come, A.C., vol. 38, p. 12808; Exhibit P-37, A.C., vol. 5, p. 1402 to 1404; see also: Exhibit P-34, A.C., vol. 5, p. 1398-1399;
[112] Testimony of Jacques Dupont, A.C., vol 36, p. 12247 and p. 12249;
[113] Testimony of Jacques Dupont, A.C., vol. 36, p. 12248;
[114] See *Agence du revenu du Québec* c. *Groupe Enico inc.*, 2016 QCCA 76, where 1 million dollars in punitive damages was ordered for far lesser important financial stakes for the applicant.

PART IV - CONCLUSIONS

FOR THESE REASONS, PLEASE THIS HONOURABLE COURT:

GRANT the appeal;

REVERSE the judgment rendered in first instance;

ORDER the Attorney General of Quebec to pay Appellant Ressources Strateco inc. the sum of $192,684,575, with interests at the legal statutory rate, as well as the additional compensation as of December 31, 2014;

ORDER the Attorney General of Québec to pay legal costs**,** in this Court and the Court below.

MONTRÉAL, October 18, 2017

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